

# Human Rights of Older Persons



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Human rights law is a complex area that has attracted an abundance of theorists and raised basic questions relating to the scope of human rights and which parties, including States and non-State actors such as businesses, have a legal duty to ensure that a particular human right held by another party (the “rights holder”) is respected. A wide range of efforts have been made to develop and enforce legally binding human rights standards through international treaties that establish rules and standards for how States should treat people and how people should treat one another. The creation of what has become known as the international human rights system began with the activities of the United Nations (“UN”) when it was first established in the aftermath of World War II and it has since grown to include a comprehensive library of treaties (there are nine core international human rights treaties and several important regional treaties) and domestic laws defining human rights, a global community of international, regional, and national bodies to monitor and interpret human rights and an expanding array of tools to enforce human rights and respond to violations of those rights by States and other actors. Specific attention is paid to the fundamental principles the so-called “International Bill of Human Rights”, which includes the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948 and two important UN human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Other core international human rights treaties address specific issues such as racial discrimination, discrimination against women, torture, rights of children, protection of migrant workers, rights of persons with disabilities and protection of persons from enforced disappearance. Human rights now include civil and political “freedoms”, equality and socio-economic rights and collective rights to a healthy environment, self-determination and development. Understanding of international human rights law also requires consideration of the international labor standards that have been drawn up by the constituents of the International Labor Organization (i.e., governments, employers, and workers) in order to set out basic principles and rights at work. In addition, while much of the attention regarding international human rights law focuses on the activities of the UN and the various human rights-related instruments promulgated as a result of UN activities, notice must be taken of other influential regional intergovernmental organizations that have been active in the establishment of mechanisms to promote and protect human rights including non-binding declarations or binding treaties.

Since 1948 there has been almost 20 declarations, principles, resolutions, plans of action and proclamations issued by the UN and its instrumentalities relating to aging, and the UN has identified aging as being among the most important global issues of the 21<sup>st</sup> Century; however, progress has been slow on drafting and adopting a comprehensive universal legal instrument relating specifically to the human rights of older persons. Issues relating to older persons have been integrated into the generic international human rights framework and emerging regional human rights legal systems and it has been recognized that the special circumstances of older persons should be taken into consideration when developing social and economic policies. There is also a growing consensus regarding the need for explicit recognition of the specific rights of older persons in the form of an international convention or treaty that would raise the profile of the issues, serve as a basis for action in different contexts and empower advocates and members of that group to act. In addition, making certain rights explicitly applicable to older persons reduces the likelihood that they will be overlooked in the existing generic framework of human rights instruments that generally does not refer to age but relies solely on inferences that may be ignored or lack practical authority because they are difficult to apply to contexts that are different than those for which they were originally developed.

Various arguments against and for a specific international convention or treaty for older persons have been made; however, the Covid-19 pandemic created a new sense of urgency for such an instrument given the egregious violations of the human rights of such persons during the response to the emergency including discrimination, exclusion, marginalization, violence and abuse. Several roadmaps are available for negotiating and completing a new legally binding international instrument on the human rights of older

persons including the UN Convention on the Rights of Persons with Disabilities, the Madrid International Plan of Action on Aging, the UN Principles for Older Persons and the Inter-American Convention on the Protection of the Human Rights of Older Persons. Human rights advocates have grown frustrated with the pace of progress within the UN Open-Ended Working Group on Aging and urged States to stop talking and start writing to bring the project to fruition. The UN Office of the High Commissioner for Human Rights has called for accelerated development of a new normative instrument that would put the spotlight on the specificity of older persons for the enjoyment of their human rights and in addressing violations, shape policy frameworks and indicators to measure progress, provide a rallying point for stakeholders and advocacy and facilitate awareness of and sensibility to the intersectionality of rights and violations. The particular challenges to older persons that have been identified and must be incorporated into a new normative framework include prevention of and protection against violence, abuse and neglect, social protection, food and housing, the right to work and access to the labor market, equality and nondiscrimination, access to justice, new technologies, education, training, health support, long-term and palliative care, lifelong learning, participation, accessibility and unpaid care work.

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## What are Human Rights?

Human rights have been described as those activities, conditions, and freedoms that all human beings are entitled to enjoy, by virtue of their humanity and regardless of their status. Human rights are ideally thought of as being inherent, inalienable (i.e., they cannot simply be waived when they are violated by another agent, such as a state or a business), interdependent (i.e., realization of one right contributes to the realization of others), and indivisible, which means that they cannot be granted or taken away or selectively ignored.<sup>1</sup> One person's enjoyment of human rights depends on universal respect for such rights and the actions of other members of society to the extent that such actions have an impact on that person's enjoyment of his or her rights.<sup>2</sup> A variety of sources have been referred to in identifying and describing human rights, including the teachings of all of the world's major religions, moral philosophy, natural law, and legal positivism. However, human rights transcend laws or cultural traditions.<sup>3</sup> Human rights are formed at the intersection of legal, moral, and social rights. Human rights should be protected under the law, and states and other parties should be legally obligated to respect

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<sup>1</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 5, 11-14. While the substance of human rights are inalienable, it is recognized that the exercise of those rights can be limited in certain circumstances after careful consideration of the appropriate balance between the interests of the individual and the general interest taking into account whether the limitations are defined by law, imposed for one or more specific legitimate purposes, necessary for one or more of these purposes in a democratic society and responsive to a clear established social need. See "Chapter 1: International Human Rights Law and the Role of the Legal Professions: A General Introduction" in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (New York and Geneva: United Nations, 2003), 5 and 15. See also ISO 26000 *Guidance on Social Responsibility* (Geneva: International Organization for Standardization, 2010), 23-24.

<sup>2</sup> [What Are Human Rights? \(International Justice Resource Center\)](#).

<sup>3</sup> [E. Viljoen, "International Human Rights Law: A Short History", UN Chronicle, Vol. XLVI No. 1 & 2 2009 \(January 2009\)](#).

human rights; human rights exist because they are moral and proper; and human rights ensure that people can live happily and safely together as members of society.<sup>4</sup>

While the basic principles of human rights described above are fairly well settled, they obviously fall short of providing specific guidance regarding the scope of human rights. Three different stances on this important question have been identified.<sup>5</sup> The first one, referred to as the relativist view, argues that human rights are culturally based, but has been widely criticized by business ethicists who believe that human rights are universal moral concepts that transcend religious, societal, and cultural norms and remain fixed across historical periods. The second one, the restrictive view, limits human rights to basic moral rights (e.g., natural rights such as life, liberty, and property) and objects to lengthy lists of economic and social human rights on the grounds that recognizing such rights makes it impossible to set fixed limits and garner universal support among states for enforcement.<sup>6</sup> The third stance, the expansive view, is based on the belief that the basis for human rights is “human dignity” and includes desirable ends or ideals (e.g., a healthy life) that society might strive to achieve but for which it will not be condemned or punished if efforts fall short. The expansive view can be seen in the broad principles of the United Nations Universal Declaration of Human Rights and the human rights treaties that have been forged based on those principles since the UN was formed.

A variety of approaches have been used to describe human rights. One way is to focus on some of the ways in which human rights impact the ability of people to participate fully in society: human rights include freedom to engage in certain activities such as being able to travel, engage in free expression, and practice a religion; human rights include freedom from certain conditions such as torture and slavery; human rights include access to services such as education, healthcare, a fair legal system, and the ability to work; and human rights include protections for vulnerable and disadvantaged groups such as the disabled, children, women, and refugees. Another way to view the landscape is through the various categories of human rights that appear from an examination of treaties and other intergovernmental instruments:<sup>7</sup>

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<sup>4</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 7.

<sup>5</sup> G. Brenkert, “Business Ethics and Human Rights: An Overview”, *Business and Human Rights Journal*, 1 (2016), 279-286.

<sup>6</sup> While the list of basic human rights is supposed to be limited under the restrictive view, not surprisingly there is no consensus on which rights should appear on the list and the lists of particular proponents of the restrictive view may actually be quite lengthy. For example, Donaldson’s list of ten fundamental international rights included freedom of physical movement, ownership of property, freedom from torture, fair trial, non-discrimination, physical security, freedom of speech and association, minimal education, political participation and subsistence. T. Donaldson, *The Ethics of International Business* (New York: Oxford University Press, 1989). See also P. Werhane, *Persons, Rights and Corporations* (Englewood Cliffs: Prentice-Hall, 1985) (listing two dozen basic moral (human) rights).

<sup>7</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 19-20.

- **Fundamental rights:** These are rights that no state, regardless of the situation, can ignore or violate and include freedom from slavery and torture, the right to life, non-discrimination, and the idea that everyone is born equal.
- **Rights in the legal system:** Individuals must enjoy an equal legal identity and have access to courts that practice justice fairly (with a presumption of innocence), competently and impartially and treat individuals well and equally and must be free from arbitrary arrest and detention.
- **Rights in society:** These include civil rights that allow individuals to participate in society and live with dignity on a daily basis free from interference by the state and include freedoms that ensure privacy, freedom of movement within a country, the right to marry and have children, to practice religion, freedom of expression, the right to a nationality, the right to seek asylum, and the right to property.
- **Political rights:** These include rights to allow people to participate in politics and in a fair political system (e.g., the rights to vote, to be a politician or government official, to form or associate with a political group, and to assemble publicly or privately to protest governmental actions or to raise awareness of an issue).
- **Economic rights:** These rights are intended to ensure that individuals have enough money and other economic resources to live with dignity in their community and include the right to work for fair wages and in a safe and healthy work environment and the right to rest and leisure (i.e., maximum work hours and required days off).
- **Social rights:** These are rights that persons should expect from living in a society, including the rights to healthcare, education, food, water, and housing, some of which are fulfilled directly by the state and others of which are provided by people themselves with the assistance and protection of the state.
- **Cultural rights:** These rights allow people to freely participate in their culture without interference from the state and include rights to language, religion, and cultural activities.

The standard view has always been that states are legally responsible for addressing the human rights of individuals within their boundaries for at least two reasons: it is the states who ratify the UN documents that articulate human rights, and states have the sole legitimate force over certain sovereign areas within which they claim authority over the individuals living and working there.<sup>8</sup> As part of their role as the primary responsible party for human rights, states are expected to set and enforce the rules on how non-state actors, such as businesses, operating within their borders impact the human rights of the state's citizens, thus implying that the responsibilities of businesses with respect to human rights are those determined by the states. A competing view is that non-state actors also have responsibilities for human rights. For example, it has been argued that businesses have responsibilities for human rights that are independent of the state, based on social expectations (i.e., a company's "social license to operate") or moral grounds.<sup>9</sup>

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<sup>8</sup> G. Brenkert, "Business Ethics and Human Rights: An Overview", *Business and Human Rights Journal*, 1 (2016), 286-287.

<sup>9</sup> Id. at 290. See also P. Werhane, "Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles: Do Corporations Have Moral Rights?" *Business Human Rights Journal*, 1 (2016), 5



This view is important in its own right, but has become particularly relevant given the growth in size and influence of transnational corporations (“TNCs”) and the difficulties that states have had in controlling TNCs and the impact of their activities on the environment and local communities and holding them legally accountable for violations of their human rights duties.<sup>10</sup>

### **What is Human Rights Law?**

Viljoen argued that “human rights law” is a manifestation of the moral claims associated with human rights as constitutional guarantees to hold governments accountable under national legal processes and transcend the vagaries of political, executive, and bureaucratic actions to ensure that basic human rights are available for everyone, including numerical minorities, the vulnerable, and the powerless. Viljoen noted that history has shown that governments do not generally grant human rights willingly and that human rights activists often must struggle to close the gap between human rights and human rights law. In fact, the chronological evolution of human rights law has been traced through three generations. First generation rights are “freedoms,” civil and political, which arose out of struggles in the eighteenth and nineteenth centuries to overcome authoritarian oppression and establish rights of free speech, association and religion and the right to vote (e.g., the Bill of Rights in the US and the Declaration of the Rights of Man and of the Citizen in France). Second generation rights emerged as the world became more industrialized and focused on “equality” and socio-economic rights including protection of workers from the harsh conditions in factories and states’ obligation to provide education and healthcare. Third generation rights are responses that began in the 1960s and 1970s to concerns associated with globalization and extreme poverty in some parts of the world and emphasize “collective” rights such as the rights to a healthy environment, self-determination, and development.<sup>11</sup>

Human rights law has also been described as a system of rights and duties overseen and enforced by legal bodies to ensure that human rights are respected, protected, and enforced. Central to this system is the notion of the “rule of law,” which means that persons live in a society that creates and supports a fair, working legal system under

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<sup>10</sup> For further discussion, see A. Gutterman, *Businesses and Human Rights of Older Persons* (Oakland CA: Older Persons’ Rights Project, 2022).

<sup>11</sup> [F. Viljoen, “International Human Rights Law: A Short History”, UN Chronicle, Vol. XLVI No. 1 & 2 2009 \(January 2009\)](#); and A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 22 (noting that the “three generations” theory was first proposed by Karel Vasak, a Czech human rights lawyer, in the 1970s inspired by the three themes of the French Revolution: Liberty; Equality, and Fraternity). Useful resources for research on international human rights include [Bayefsky.com](#), which includes a searchable database of international human rights jurisprudence, including by state, by category, by treaty, by treaty article, by theme or subject, and by key word; the [University of Minnesota Human Rights Center](#), which provides access to more than four thousand links and a unique search device for multiple human rights sites; and the [International Justice Resource Center](#), which contains informational resources useful for become familiar with international human rights law (including a brief history and explanation of international human rights law), and for conducting further research on specific standards and decisions.

which everyone will be judged and protected by the same law, everyone will be equal before the law, everyone will have the same protection before the law, legal rules will be public knowledge without “secret” understandings known only to a select few, and individuals will have the right to find assistance to understand the law.<sup>12</sup> This means that states must incorporate recognition and protection of human rights into their domestic legal systems, and globally there is a strong correlation between a country’s adoption and respect for the rule of law and the level of human rights problems in that country.<sup>13</sup>

Another important feature of human rights law, which admittedly remains unsettled, is the specification of the party or parties that have a legal duty to ensure that a particular human right held by another party (the “rights holder”) is respected. While states are the most important “duty bearers,” tasked with the duties and responsibilities set out in human rights treaties and other instruments as described below, it is clear that other societal relationships in which rights holders are involved arguably create duties for individuals, businesses, and other entities like universities and hospitals. Duties have often been described as being either positive (i.e., the duty bearer is required to provide a good, service, or other benefits to the rights holder) or negative (i.e., the duty bearer is required to refrain from taking specific actions that might interfere with the rights of the rights holder).<sup>14</sup>

There is an extensive and intensive debate regarding the scope of the human rights duties and obligations of states and non-state actors like businesses including the extent to which the state is expected to intervene and provide protections to rights holders and guarantees that their rights will be respected by non-state actors. Statements on the obligations and duties that international human rights law places on states have traditionally focused on respecting, protecting, and fulfilling human rights. As such, international human rights law is based on the expectation that states will refrain from interfering with or curtailing the enjoyment of human rights, will protect individuals and groups from human rights abuses and will take positive action to facilitate the enjoyment of basic human rights. In recent years, however, more attention has turned to states’ actions with respect to the promotion of human rights (e.g., proactively planning human rights education and introducing new human rights-related legislation) and preventing human rights violations from occurring as opposed to responding after the damage has been done (e.g., human rights education, publicizing existing human rights laws, and strengthening policing activities). In addition, the scope of states’ duties to protect human rights is being scrutinized as efforts move forward to formalize the human rights

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<sup>12</sup> The Universal Declaration of Human Rights, described below, states “... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

<sup>13</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia* (Volume 1) (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 14-15.

<sup>14</sup> *Id.* at 16-17.

duties and obligations of businesses and other non-state actors (i.e., what role will states be expected to play in enforcing the duties of non-state actors?).<sup>15</sup>

International law in general, as well as international human rights law specifically, is a combination of various elements often categorized as “soft” and “hard” international law. “Soft law” has been described as codification of norms in various declarations and statement of principles that States agree to act in accordance with.<sup>16</sup> Soft law is “aspirational rather than strictly binding” and is to be contrasted with “hard” international law including customary law (i.e., norms and practices so widely accepted that they are considered binding for all States, regardless of any international organization membership) and positive international law (i.e., standards to which States explicitly bind themselves through signature and ratification of relevant treaties or conventions).<sup>17</sup> Since soft law is not intended, at least initially, to be binding on States, drafters often feel they have more freedom to create most expansive and detailed proposals; however, while soft law in and of itself is not binding it can nonetheless be quite influential, as has been the case with the UN’s Universal Declaration of Human Rights, and may ultimately evolve into customary law and serve as a basis for creating new treaties or conventions.<sup>18</sup>

### Development of Legally Binding Human Rights Standards

Legally binding standards relating to recognition and protection of the rights of individuals, to the extent they existed, were largely based on constitutional provisions adopted at the national level. The first steps toward what has become the modern international human rights framework were taken in the 1800s and early 1900s with the adoption of treaties on the slave trade and slavery, the recognition of humanitarian obligations during period of armed conflict (e.g., the Geneva Convention), the inclusion of provisions relating to the rights of minorities in the peace treaties signed at the end of

<sup>15</sup> Id. at 18. Useful resources for research on international human rights include Bayefsky.com ([www.bayefsky.com](http://www.bayefsky.com)), which includes a searchable database of international human rights jurisprudence, including by state, by category, by treaty, by treaty article, by theme or subject, and by key word; the University of Minnesota Human Rights Center ([www1.umn.edu/humanrts/](http://www1.umn.edu/humanrts/)), which provides access to more than four thousand links and a unique search device for multiple human rights sites; and the International Justice Resource Center (<https://ijrcenter.org/human-rights-law/>), which contains informational resources useful for become familiar with international human rights law (including a brief history and explanation of international human rights law), and for conducting further research on specific standards and decisions..

<sup>16</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 8.

<sup>17</sup> When a State ratifies a treaty or convention it signs on to certain basic characteristics of “hard law” including obligations to revise its own laws in line with the instrument, introduce policies and programs to implement the different parts of the instrument and submit to the instrument’s monitoring system that includes reporting to and possible investigations by a committee of independent experts called a “treaty body”. Reports are publicly available, thus putting States under greater scrutiny, and committees also have the power to examine and investigate individual complaints of rights violations. [Strengthening Older People’s Rights: Towards a UN Convention](#), 6.

<sup>18</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 8.



World War I and the specification of fundamental workers' rights in conjunction with the 1920 International Labor Organization Constitution, which came into effect following the creation of the influential International Labor Organization ("ILO") in 1919.<sup>19</sup> The post-World War I League of Nations did take some preliminary steps toward establishing a human rights system, including the creation of specialized bodies to hear the complaints of minorities and persons living in mandate territories, but no real progress was made by the time that the world plunged back into a traumatic war that was notable for its racially-motivated atrocities.<sup>20</sup>

However, with the end of World War II and a tumultuous period of global unrest, states were finally ready to seek an international consensus on which individual rights and liberties that all states should respect, to establish mechanisms to promote their adherence to their human rights obligations, and to provide individuals with credible means for asserting claims of human rights violations to protect their expectations of enjoying those rights.<sup>21</sup> The creation of what has become known as the international human rights system began with the activities of the United Nations ("UN") when it was first established. It has since grown to include a comprehensive library of treaties and domestic laws defining human rights, a global community of international, regional, and national bodies to monitor and interpret human rights and an expanding array of tools to enforce human rights and respond to violations of those rights by states and other actors. One of the principal objectives of the UN was to formally develop a basis for an international human rights framework, beginning with borrowing and adapting guidance and standards that had previously been included in national constitutions, customary law, and international treaties.<sup>22</sup> It was argued that in order for the UN to fulfill its mandate, as set out in its Charter, to ensure world peace through the establishment of conditions where states could maintain friendly relations, it was necessary for the members to promote universal respect for, and observance of, human rights and fundamental freedoms.

While human rights are not created and bestowed by states, the reality is that human rights flourish best when governments proactively put in place the laws, regulations, and grievance and remediation procedures that are necessary to define and protect such rights and regulate private and public behaviors and practices that impact the enjoyment of those rights by individual members of society. In fact, states have traditionally been seen as the primary guarantors, as well as the most likely violators, of human rights. States can, and often do, act on their own to guarantee certain fundamental human rights within

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<sup>19</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 36.

<sup>20</sup> F. Viljoen, "International Human Rights Law: A Short History", *UN Chronicle*, Vol. XLVI No. 1 & 2 2009 (January 2009), <https://unchronicle.un.org/article/international-human-rights-law-short-history>

<sup>21</sup> What Are Human Rights? (International Justice Resource Center), <https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>

<sup>22</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 37.

their own territorial boundaries. However, many states have a notoriously poor record with respect to human rights laws and practices. The lack of uniformity among the global community of nations with respect to recognition of and respect for human rights has led to the emergence of an international human rights framework that includes international treaties and other diplomatic instruments that are intended to establish rules that form a covenant between ratifying states and the international community with respect to the steps that the states will take in order to fulfill their duties to respect, protect, and fulfill the enjoyment of human rights within their borders.<sup>23</sup>

International treaties have been described as efforts to establish rules and standards for how states should treat people and how people should treat one another.<sup>24</sup> An international treaty itself is an agreement governed by international law between states which creates legal obligations on those states.<sup>25</sup> International treaties cannot be forced on states and it is up to each state to willingly consent to and assume the duties and obligations that have been laid out in the treaty language, subject to any reservations or interpretative declarations that the state may have made upon ratification or accession that are not incompatible with the object and purpose of the treaty. Treaties are most commonly referred to as conventions. However, the web of treaties relating to international human rights also includes charters, which are used to establish international bodies such as the UN, and protocols, which are addendums to another treaty. Declarations, including the famous Universal Declaration of Human Rights described below, are not treaties and thus do not have the same legally binding effect of a treaty, but they are often written in the same format as a treaty and can gain a significant of influence in their own right. Other principles or influential guidance for international human rights law can be found among covenants, resolutions, and conference outcome documents. Finally, the sources of international law also include “customary” international law, which is an unwritten form of law created after years of state practice; general principles of law based on commonly used practices in national systems (e.g., the right to a fair trial); and judicial decisions and teachings of international law including decisions by international courts (e.g., the International Court of Justice), tribunals, international arbitrators, and national courts hearing cases that involve human rights.<sup>26</sup>

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<sup>23</sup> What Are Human Rights? (International Justice Resource Center), <https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>

<sup>24</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 31, 33-35.

<sup>25</sup> The Vienna Convention on the Law of Treaties (1969) is considered to be the law of treaty interpretation and defines a treaty as “an international agreement concluded between States in written form and governed by international law.” Among other things, the Vienna Convention provides that customary international law continues to exist even after the creation of a treaty-based norm and a treaty must be performed in good faith in accordance with any particular understanding reached by the parties upon entering the treaty.

<sup>26</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (Eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 31, 33-35. See also “Chapter 1: International Human Rights Law and the Role of the Legal Professions: A General Introduction” in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (New York and Geneva: United Nations, 2003).

The formal rules relating to human rights set out in treaties and corresponding domestic laws are often referred to as “human rights standards,” which have been explained to be the outline of a specific standard of expected treatment for human beings, which in some cases may be vague (e.g., the right to be free of slavery does not define the term “slavery”) and in other instances may be quite specific (e.g., all children have a right to free and compulsory primary education). Regardless of how the human rights standard is defined and explained, it is generally thought to be the minimum required level that states are obligated and expected to maintain. That said, the practical meaning and application of what would appear to be a non-controversial standard, such as the rights of persons to enjoy a minimum “standard of living” and “quality of life,” can lead to a contentious public policy debate as states struggle to find and allocate the resources necessary to support the specific elements the standard under consideration (e.g., how does the state obtain or create the food, water and housing necessary to achieve a universal minimum standard of living for everyone in its jurisdiction?).<sup>27</sup>

As noted above, a state cannot be compelled to ratify and join a treaty, even in those instances where there is overwhelming sentiment in the international community that the duties and obligations included in the treaty should be universally applied and that arguments by individual states that the treaty infringes on their sovereign rights should be ignored. Moreover, there is really no legitimate and adequate international policing mechanism to ensure states’ compliance with treaty obligations, although the UN Security Council and international courts have tried on various occasions. In spite of this, states often ratify treaties that burden them with additional legal obligations, doing so for a variety of reasons including the demands and expectations of their citizens who prefer to have their rights protected against possible adverse actions of the state; agreement by the state with the treaty’s objectives and purposes (e.g., the state may already have domestic laws in place that recognize and protect the rights of persons who are to be covered by the treaty); and concerns about their global image and international pressure. When states do ratify an international rights treaty, they commit to performing their obligations under the treaty in good faith and refraining from interpreting the treaty in a way that justifies taking any actions that are inconsistent with the “object and purpose” of the treaty (e.g., deporting all children in order to ensure that the rights of children are protected within its borders).<sup>28</sup>

### *Universal Declaration of Human Rights*

The term “human rights” was mentioned seven times in the UN’s founding Charter, making the promotion and protection of human rights a key purpose and guiding principle of the organization from the very beginning. For example, the Preamble to the Charter included an affirmation of “fundamental human rights,” the dignity and worth of the human person and the equal rights of men and women and nations large and small, and expressed the determination to promote social progress and better standards of life in larger freedom. Article 1(3) of the Charter described one of the purposes of the UN as

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<sup>27</sup> Id. at 30-31 and 41-43 (includes a good introductory overview of the process of creating treaties).

<sup>28</sup> Id. at 39 and 46.

being “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” Articles 56 and 55(c) of the Charter, read together, establish a legal obligation for the UN Member States “to take joint and separate action in co-operation with the Organization for the achievement of . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

However, while “human rights and fundamental freedoms” were mentioned and recognized in the UN Charter, the Charter itself did not include any definition of the term and the task of fleshing out the concept was assigned to what was then referred to as the UN Commission of Human Rights (“UNCHR”). The UNCHR had 15 member countries, each of which appointed drafters of a document that was to become known as the Universal Declaration of Human Rights (“UDHR”). The drafting, which was led by Eleanor Roosevelt, the former First Lady of the US, took about two years and required the review of materials and ideas from a variety of sources including national constitutions, laws, declarations, religious and philosophical commentary, and other expert input from around the world. Once the drafting was completed, the members of the Commission discussed and modified the proposed Declaration and presented it to the General Assembly, which adopted it on December 10, 1948, a date that has since been celebrated annually as “Human Rights Day.”<sup>29</sup>

The UN General Assembly proclaimed that the UDHR should serve as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society (arguably including businesses) should strive by teaching and education to promote respect for the rights and freedoms identified and described in the UDHR. The 30 rights in the UDHR follow a progression that begins with fundamental rights, then continues with civil and political rights, and ends with economic, social, and cultural rights. Article 1 of the UDHR provides that “all human beings are born free and equal in dignity and rights,” and Article 2 of the UDHR sets out a non-exhaustive list of prohibited grounds for discrimination including, among others, religion, race or color, and political or other opinion. Article 3 of the UDHR declares that all persons have a right to life, liberty, and security of person. Articles 4 to 21 set out other civil and political rights:

- Article 4: Freedom from slavery or servitude (slavery and the slave trade are prohibited in all forms).
- Article 5: Freedom from torture and degrading treatment or punishment.
- Article 6: Right to recognition as a person before the law.
- Article 7: Right to equality before the law and equal protection against any discrimination.
- Article 8: Right to remedy by competent tribunal for acts violating the fundamental freedoms granted by constitution or law.

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<sup>29</sup> Id. at 38.

- Article 9: Freedom from arbitrary arrest, detention, and exile.
- Article 10: Right to a fair public hearing by an independent and impartial tribunal.
- Article 11: Right to be considered innocent until proven guilty.
- Article 12: Freedom from interference with privacy or attacks on reputation.
- Article 13: Right to free movement with the borders of each state and the right to leave and return to one's own country.
- Article 14: Right to seek and to enjoy in other countries asylum from persecution.
- Article 15: Right to a nationality and the freedom to change it.
- Article 16: Right to marriage (only with the free and full consent of the intended spouses) and family.
- Article 17: Right to own property.
- Article 18: Freedom of thought, conscience, and religion.
- Article 19: Freedom of opinion and expression and the right to seek, receive, and impart information and ideas.
- Article 20: Right of peaceful assembly and association.
- Article 21: Right to participate in government and in free elections.

Articles 22 to 27 detail a number of economic, social and cultural rights to which people are entitled as members of society. However, Article 22 also recognizes that the achievement of these aims is dependent upon the resources of individual states:

- Article 22: Right to social security.
- Article 23: Right to work, favorable work conditions, and just remuneration, and to join trade unions.<sup>30</sup>
- Article 24: Right to rest and leisure (including reasonable limitation of working hours and periodic holidays with pay).
- Article 25: Right to adequate living standards, including healthcare, food, and housing.<sup>31</sup>
- Article 26: Right to education.<sup>32</sup>
- Article 27: Right to participate in the cultural life of a community, enjoy the arts, and share in scientific advancement and its benefits.<sup>33</sup>

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<sup>30</sup> Article 23 includes an extensive list of rights relating to work and working conditions including (i) the rights to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment; the right to equal pay for equal work, without discrimination; (iii) the right to just and favorable remuneration ensuring for himself and his family an existence worth of human dignity, and supplemented, if necessary, by other means of social protection; and (iv) the right to form and to join trade unions for the protection of his interests.

<sup>31</sup> Article 25(2) explains that motherhood and childhood are entitled to special care and assistance and that all children, whether board in or out of wedlock, are entitled to the same social protection.

<sup>32</sup> Article 26 explained the basic universal right to education by saying that education should be free, at least in the elementary and fundamental stages, and that elementary education should be compulsory. Technical and professional education should be made generally available and higher education should be equally accessible to all on the basis of merit. Parents should have the right to choose the kind of education that is given to their children. Finally, education should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.



The last three articles of the UDHR address the right to a world where human rights are protected (Article 28); community duties essential to free and full development (Article 29); and the duty not to use rights to interfere with others (Article 30).<sup>34</sup>

While it was originally intended that the UDHR would be the single source of universally recognized human rights, a different path was eventually followed that led to the drafting and adoption of multiple covenants. Nonetheless, there is no debate that the UDHR has become the foundation of the international human rights framework, signaling a shift toward an understanding that all states share an obligation to take action against individual governments that abuse and violate the human rights of their citizens. However, since it is not a treaty, it technically is not a legally binding obligation on the states that comprise the membership of the UN. In spite of this, it has been argued that the UDHR is legally binding on states since by their agreement to adhere to the UN Charter they have committed to protect the human rights that have been defined in the Declaration. Moreover, members of the UN are continuously admonished to respect the UDHR and are regularly assessed on their commitment to the UDHR. The principles of the UDHR have also become legally binding to the extent that they have been incorporated into national laws and certain of the rights in the UDHR (e.g., freedom from slavery and torture) have come to be considered as customary and thus legally protected regardless of the status of the UDHR itself.<sup>35</sup>

Regardless of its formal legal status, the UDHR served as the first “universal” statement of an expansive set of fundamental rights and laid the foundation for the international human rights framework that has evolved since December 1948.<sup>36</sup> The UDHR has been cited as the inspiration for more than 80 international human rights treaties and declarations,<sup>37</sup> a great number of regional human rights conventions and domestic human rights laws and constitutions, all of which have evolved into a comprehensive legally

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<sup>33</sup> Article 27 also recognizes a person’s right to protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he or she is the author.

<sup>34</sup> For further information on the UDHR, see [OHCHR, Fact Sheet No 2: The International Bill of Rights \(Rev 1\)](#) and [OHCHR, Fact Sheet No 30: The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies](#).

<sup>35</sup> For example, the “fundamental principles enunciated in the ... Declaration” were found by the International Court of Justice to be legal binding on Iran with regard to what the Court found to be that country’s wrongful deprivation of liberty with respect to members of the US diplomatic and consular staff in Tehran and the imposition of “physical constraint in conditions of hardship”. See *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, ICJ Reports 1980, p. 42, paragraph 81.

<sup>36</sup> A. Sharom, J. Purnama, M. Mullen, M. Asuncion and M. Hayes (eds.), *An Introduction to Human Rights in Southeast Asia (Volume 1)* (Nakhorn Pathom, Thailand: Southeast Asian Human Rights Studies Network, 2018), 38-39.

<sup>37</sup> The Office of the High Commissioner for Human Rights (“OHCHR”) website lists all international treaties and instruments relating to human rights: <http://www.ohchr.org/english/law/index.htm>. Topics of relevant resolutions and decisions adopted by intergovernmental organizations include, for example, the responsibility of states for internationally wrongful acts, rights to remedies and reparations for victims of gross violations of international human rights, protection of children in armed conflict, child prostitution, rights of indigenous peoples and anti-corruption.

binding system for the promotion and protection of human rights that includes an array of specialized instruments that focus on specific issues and social groups such as racial discrimination, torture, enforced disappearances, disabilities, and the rights of women, children, migrants, minorities, and indigenous peoples.<sup>38</sup> Today, the Office of the UN High Commissioner for Human Rights (“OHCHR”) (<http://www.ohchr.org/>) has lead responsibility in the UN system for the promotion and protection of human rights, supports the human rights components of peacekeeping missions in several countries, and has many country and regional offices and centers.<sup>39</sup> The Human Rights Council, established in 2006, replaced the UNCHR as the key independent UN intergovernmental body responsible for human rights.

### ***International Bill of Human Rights***

The UDHR has been linked to two important UN human rights treaties, the International Covenant on Civil and Political Rights (adopted on December 16, 1966 and entered into force on March 23, 1976) (“ICCPR”)<sup>40</sup> and the International Covenant on Economic, Social and Cultural Rights (adopted on December 16, 1966 and entered into force on January 3, 1976) (“ICESCR”),<sup>41</sup> to form the so-called “International Bill of Human Rights.” The ICCPR includes and expands upon almost all of the civil and political rights that had been included in the UDHR (other than rights relating to asylum, which are addressed in the Convention Relating to the Status of Refugees) and its Preamble explains that “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.” The ICCPR is generally considered to be the most widely accepted of the international human rights treaties, it is less controversial than many of the other treaties, and its principles have gained broad acceptance as demonstrated by the inclusion of the rights laid out in the ICCPR into the domestic legal systems of numerous countries.

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<sup>38</sup> The Foundation of International Human Rights Law, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>. In addition, human rights principles are being introduced into new areas such as treaty-like agreements on the environment (e.g., the Paris Agreement on Climate Change). See, e.g., J. Knox, “The Paris Agreement As a Human Rights Treaty” in Akande et al. (eds), *Human Rights and 21st Century Challenges: Poverty, Conflict, and the Environment* (Oxford: Oxford University Press, 2018).

<sup>39</sup> The OHCHR website contains useful information about, and full text links to, international human rights law and jurisprudence, the various UN treaty monitoring bodies, and a significant library of reports and publications.

<sup>40</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. Two supplementary Optional Protocols have been adopted with respect to the ICCPR. The first one gives individuals the right to petition the HRC and the second one is intended to promote the abolition of the death penalty by requiring states parties to ensure that no capital punishment is ever imposed on anyone anywhere in their territory. For further information on the ICCPR, see OHCHR Fact Sheet No 15: Civil and Political Rights: The Human Rights Committee.

<sup>41</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> For further information on the ICESCR, see [OHCHR, Fact Sheet No 16: The Committee on Economic, Social and Cultural Rights \(Rev 1\)](#) and [UN Committee for Economic, Social and Cultural Rights homepage](#).

Article 1 of the ICCPR begins by affirming that all peoples have the right of self-determination, which means the right to freely determine their political status, freely pursue their economic, social and cultural development, and freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. Article 2(1) of the ICCPR calls on states to respect and ensure that all individuals within their territories can enjoy the rights contained in the ICCPR without discriminatory distinctions on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Article 2(3) of the ICCPR requires that states ensure that any person whose rights or freedoms established by the ICCPR are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Each of Articles 6 to 11 of the ICCPR focus on the protection of a person's life, liberty, and physical security:

- Article 6: Every human being has the inherent right to life, which shall be protected by law, and no one shall be arbitrarily deprived of his life.<sup>42</sup>
- Article 7: No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- Article 8: No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labor.<sup>43</sup>
- Article 9: Everyone has the right to liberty and security of person and no one shall be subjected to arbitrary arrest or detention or deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.<sup>44</sup>
- Article 10: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

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<sup>42</sup> Article 6 includes provisions relating to countries which have not abolished the death penalty, instructing them that the death sentence may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of Article 6, prohibiting the imposition of the death penalty for crimes committed by persons below eighteen years of age and on pregnant women and requiring that anyone sentenced to death have the right to seek pardon or commutation of the sentence.

<sup>43</sup> Article 8(c) provides that, for the purpose of Article 8, the term "forced or compulsory labor" shall not include: (i) any work or service, not referred to in Article 8(b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention; (ii) any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors; (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community; and (iv) any work or service which forms part of normal civil obligations.

<sup>44</sup> Article 9 includes various procedural rights for persons who are arrested or detained including the right to be informed in a timely manner of the reasons for his arrest and any charges against him, the right to a trial within a reasonable period of time or release and the enforceable right to compensation in the event of unlawful arrest or detention.

- Article 11: No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Articles 12 and 13 of the ICCPR deal with the movement of people into, out of, and within a state. Specifically, everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence, and everyone shall be free to leave any country, including his own, and not be arbitrarily deprived of the right to enter his own country. Articles 14 to 16 cover a variety of topics relating to the fair treatment of people by the judicial system including the right of everyone to recognition everywhere as a person before the law. For example, all persons shall be equal before the courts and tribunals and shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. In addition, everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Articles 17 to 22 cover a series of fundamental individual rights and freedoms:

- Article 17: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor subjected to unlawful attacks on his honor and reputation.
- Article 18: Everyone has the right to freedom of thought, conscience, and religion.
- Article 19: Everyone has the right to hold opinions without interference and the rights to freedom of expression (subject to limitations in the context of expressions of national, racial or religious hatred) and to seek, receive, and impart information and ideas.
- Article 20: Any propaganda for war shall be prohibited by law.
- Article 21: The right of peaceful assembly shall be recognized.
- Article 22: Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Other rights addressed in the ICCPR include family issues; the rights of children; the right to vote and other forms of political participation; the right to equality under the law, equal protection by the law, and non-discrimination; and rights relating to protection of minorities (i.e., ethnic, linguistic, and religious groups should be able to enjoy their own culture, use their own language, and practice their own religion).

The ICESCR is also based on principles originally outlined in the UDHR, providing additional details in many instances, and affirms the right of all peoples to self-determination and their freedom to pursue and enjoy their economic, social, and cultural rights without discrimination of any kind. States are responsible for taking the steps necessary to the maximum of their available resources to achieve progressive, and ultimately full, realization of the rights enumerated in the ICESCR, including particularly the adoption of legislative measures.<sup>45</sup> The ICESCR covers<sup>46</sup>:

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<sup>45</sup> Recognizing that the path to full enjoyment of many of the rights included in the ICESCR can be lengthy and dependent upon the available resources of a particular state, the ICESCR makes allowances for

- **Workers' rights**, including freedom from forced labor, the rights to decide freely to accept or choose work, to fair wages and equal pay for equal work, to leisure and reasonable limitation of working hours, to safe and healthy working conditions, to join and form trade unions, and to strike.
- **The right to social security and social protection**, including the right not to be denied social security coverage arbitrarily or unreasonably, and the right to equal enjoyment of adequate protection in the event of unemployment, sickness, old age, or other lack of livelihood in circumstances beyond one's control.
- **Protection of and assistance to the family**, including the rights to marriage by free consent, to maternity and paternity protection, and to protection of children from economic and social exploitation.
- **The right to an adequate standard of living**, including the rights to **food** and to be free from hunger, to **adequate housing**, to **water**, and to **clothing**.
- **The right to health**, including the right to access to health facilities, goods, and services, to healthy occupational and environmental conditions, and protection against epidemic diseases, and rights relevant to sexual and reproductive health.
- **The right to education**, including the right to free and compulsory primary education and to available and accessible secondary and higher education, progressively made free of charge; and the liberty of parents to choose schools for their children.
- **Cultural rights**, including the right to participate in cultural life and to share in and benefit from scientific advancement, and protection of authors' moral and material interests from scientific, literary, or artistic production.

It is important to note that each of the rights listed above contain dual freedoms: freedom *from* the state and freedom *through* the state. This means, for example, that individuals not only have the right to be free from forced evictions carried out by state agents, but they also have the right to expect assistance from the state in certain situations in order for them to be able to access adequate housing.<sup>47</sup>

### ***Additional Core UN International Human Rights Treaties***

To date, nine core international human rights treaties have been adopted, all of the UN Member States have ratified at least one of them, and 80% of the Member States have

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progressive development, consistent with the ideas in the UDHR. In contrast, no such allowance is made in the ICCPR for realization of civil and political rights. This distinction has sometimes led to the suggestion that the economic, social and cultural rights in instruments such as the ICESCR, which are largely dependent on political processes and economic resources as opposed to judicial activity, should be considered "goals or aims" that do not clearly resemble the traditional characteristics of "rights". See [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 918.](#)

<sup>46</sup> OHCHR, Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights.

<sup>47</sup> Id.



ratified four or more.<sup>48</sup> Two of them, the ICCPR and the ICESCR, have been described above. The other core international treaties are:

- International Convention on the Elimination of All Forms of Racial Discrimination (adopted 1965 and in force 1969)<sup>49</sup>
- Convention on the Elimination of All Forms of Discrimination against Women (adopted 1979 and in force 1981)<sup>50</sup>
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 1984 and in force 1987)
- Convention on the Rights of the Child (adopted 1989 and in force 1990)<sup>51</sup>
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 1990 and in force 2003)
- Convention on the Rights of Persons with Disabilities (adopted 2006 and in force 2008)<sup>52</sup>
- International Convention for the Protection of All Persons from Enforced Disappearance (adopted 2006 and in force December 2010)

The UN has explained that international human rights law as laid out in the various treaties referred to above is a set of obligations that states are bound to respect if and when they become parties to the treaties. States that ratify a human rights treaty voluntarily assume obligations and duties under international law to respect, to protect, and to fulfill human rights including refraining from interfering with or curtailing the enjoyment of human rights, protecting individuals and groups against human rights abuses, and taking positive actions to facilitate the enjoyment of basic human rights. In addition, states that ratify human rights treaties are expected to put into place domestic measures and legislation that are compatible with their treaty obligations and duties. This means that domestic legal systems are intended to provide the principal protections for internationally-recognized human rights. However, if those systems are not effective in addressing human rights abuses, recourse may be taken to mechanisms and procedures for individual and group complaints that are available at the regional and international levels (e.g., international courts rendering judicial and quasi-judicial decisions on international and criminal law) in order to ensure that states fulfill their obligations and duties under the treaties at the local level.<sup>53</sup>

<sup>48</sup> [The Foundation of International Human Rights Law](#). The [Office of the High Commissioner for Human Rights \(“OHCHR”\) website](#) lists all international treaties and instruments relating to human rights.

<sup>49</sup> [International Convention on the Elimination of All Forms of Racial Discrimination](#).

<sup>50</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#).

<sup>51</sup> [UN Convention on the Rights of the Child](#).

<sup>52</sup> [A/RES/61/106](#)

<sup>53</sup> [The Foundation of International Human Rights Law](#). See also What Are Human Rights? (International Justice Resource Center), <https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/> See “Chapter 1: International Human Rights Law and the Role of the Legal Professions: A General Introduction” in Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers (New York and Geneva: United Nations, 2003), 20-24 (discussion of incorporating international law into domestic legal systems and practical examples of the application of international human rights law in domestic courts).

### *International Labor Standards*

Understanding of international human rights law also requires consideration of the international labor standards that have been drawn up by the constituents of the ILO (i.e., governments, employers, and workers) in order to set out basic principles and rights at work.<sup>54</sup> Standards come in the form of Conventions (or Protocols), which are legally binding international treaties that may be ratified by member states, or Recommendations, which serve as non-binding guidelines. The ILO Governing Body has identified eight “fundamental” Conventions, covering subjects considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in employment and occupation. These principles are also covered by the ILO Declaration on Fundamental Principles and Rights at Work (1998). The eight fundamental Conventions are:

- [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)<sup>55</sup>
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- [Forced Labour Convention, 1930 \(No. 29\)](#) (and its [2014 Protocol](#))
- [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)
- [Minimum Age Convention, 1973 \(No. 138\)](#)
- [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)
- [Equal Remuneration Convention, 1951 \(No. 100\)](#)<sup>56</sup>
- [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#)<sup>57</sup>

Other ILO conventions and standards with applicability to business and human rights include the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the ILO’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (originally adopted in 1977 and last revised in 2017).

<sup>54</sup> In its 1944 [Declaration of Philadelphia](#) the General Conference of the ILO confirmed the following: " ... labour is not a commodity; freedom of expression and of association are essential to sustained progress; poverty anywhere constitutes a danger to prosperity everywhere;... All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.... The attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy....".

<sup>55</sup> Articles 2 and 11 provide: "Workers and employers, without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing.... Each Member ... undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize."

<sup>56</sup> Article 2 provides: "Each Member shall ... ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value."

<sup>57</sup> Articles 2 and 3 provide: "Each Member ... undertakes to declare and pursue a national policy ... to promote ... equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination.... Each Member ... undertakes ... to promote such educational programmes as may ... secure the acceptance and observance of the policy...."

The ILO has declared that age should not constitute a valid reason for termination of the employment relationship and that this principle should be clearly enshrined in national laws and practices on retirement and in national policies aimed at curbing age-based discrimination and guaranteeing that older persons have the right to work and access to the labor market.<sup>58</sup> While there is no ILO convention with a specific provision on the question of age the ILO has developed in its Recommendation 162 standards for preventing the discrimination of older workers in employment, social security and retirement which include the following principles and guidelines for Member States.<sup>59</sup>:

- Employment problems of older workers should be dealt with in the context of an over-all and well-balanced strategy for full employment and, at the level of the undertaking, of an over-all and well-balanced social policy, due attention being given to all population groups, thereby ensuring that employment problems are not shifted from one group to another. (Paragraph 2)
- Each Member should, within the framework of a national policy to promote equality of opportunity and treatment for workers, whatever their age, and of laws and regulations and of practice on the subject, take measures for the prevention of discrimination in employment and occupation with regard to older workers. (Paragraph 3)
- Older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with other workers as regards to access to vocational guidance and placement services; access, taking account of their personal skills, experience and qualifications, to employment of their choice in both the public and private sectors; access to vocational training facilities, in particular further training and retraining, and paid educational leave; access to promotion and eligibility for distribution of tasks; employment security; remuneration for work of equal value; social security measures and welfare benefits; conditions of work, including occupational safety and health measures; and access to housing, social services and health institutions, in particular when this access is related to occupational activity or employment. (Paragraph 5)
- Within the framework of a national policy to improve working conditions and the working environment at all stages of working life, measures appropriate to national conditions and practice designed to enable older workers to continue in employment under satisfactory conditions should be devised, with the participation of the representative organizations of employers and workers. (Paragraph 11)
- Wherever possible, measures should be taken with a view to ensuring that, in a framework allowing for a gradual transition from working life to freedom of activity,

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<sup>58</sup> [UN Department of Economic and Social Affairs: Substantive Inputs on the Focus Area “Right to Work and Access to the Labour Market”, UN Doc. A/AC.278/2021/CRP.3 \(March 6, 2021\)](#), Paragraph 5 (citing ILO Recommendation 131 (1967); [Older Workers Recommendation, 1980 \(No. 162\)](#) and ILO Recommendation 166 (1982)).

<sup>59</sup> [Older Workers Recommendation, 1980 \(No. 162\)](#). See also the ILO’s [Employment Policy Recommendation, 1964 \(No. 122\)](#) (referring to employment policy regarding certain vulnerable groups, including the elderly).

retirement is voluntary; and making the age qualifying for an old-age pension flexible. (Paragraph 21)

In its *Centenary Declaration for the Future of Work* adopted in 2019, the ILO called on Member States to implement measures to help older workers “expand their choices, optimizing their opportunities to work in good-quality, productive and healthy conditions until their retirement, and to enable active ageing” and “strengthen opportunities for effective lifelong learning and quality education for all, thus including older persons”.<sup>60</sup>

### ***Human Rights and Other Specialized International Intergovernmental Bodies***

Human rights are also an important part of the activities of other specialized international intergovernmental bodies. For example, the Constitution of the World Health Organization (“WHO”) was the first international instrument to enshrine the enjoyment of the highest attainable standard of health as a fundamental right of every human being and the WHO has explained that it consider this “right to health” to be “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, for example access to health information, access to water and food, housing, etc.”.<sup>61</sup> The World Bank has established the Human Rights, Inclusion and Empowerment Umbrella program to support a human rights-based approach to development by providing World Bank Group staff with knowledge and learning on human rights; however, activists such as Human Rights Watch have been critical of international financial institutions such as the World Bank, International Monetary Fund, and regional development and investment banks for alleged discrimination in the distribution of development aid and reprisals by those institutions against critics of funded “development” initiatives that undermine, rather than advance, human rights.<sup>62</sup> It is has been argued that the rules of the World Trade Organization relating to the conduct of international trade are not inherently antagonistic to human rights, but that those rules constrain the ability of members to require protection of human rights in their decisions about their trade engagement with other members since members are prohibited from distorting trade when they attempt to advance human rights at home or abroad.<sup>63</sup>

### **The UN and the Human Rights of Older Persons**

The UN has identified aging as being among the most important global issues, noting that virtually every country in the world is experiencing growth in the number and proportion of older persons in their population and predicting that aging will become one of the most significant social transformations of the 21<sup>st</sup> Century impacting nearly all sectors of society including labor and financial markets, the demand for goods and services (e.g., housing, transportation and social protection) and family structures and intergenerational

<sup>60</sup> [UN Department of Economic and Social Affairs: Substantive Inputs on the Focus Area “Right to Work and Access to the Labour Market”](#), UN Doc. A/AC.278/2021/CRP.3 (March 6, 2021), Paragraph 4.

<sup>61</sup> [WHO Website \(Human rights\)](#)

<sup>62</sup> [World Bank, IMF \(hrw.org\)](#)

<sup>63</sup> [S. Aaronson, \*Seeping in slowly: The WTO and human rights\* \(January 20, 2009\).](#)

ties.<sup>64</sup> In its publication “World Population Aging 2019” the UN Department of Economic and Social Affairs reported: “In 2019, there were 703 million persons aged 65 years or over in the global population. This number is projected to double to 1.5 billion in 2050. Globally, the share of the population aged 65 years or over increased from 6 per cent in 1990 to 9 per cent in 2019. That proportion is projected to rise further to 16 per cent in 2050, when it is expected that one in six people worldwide will be aged 65 years or over.”<sup>65</sup> According to the UN, these trends will likely lead to fiscal and political pressures in many countries in relation to public systems of health care, pensions and social protections for the growing older population.<sup>66</sup>

Addressing the issues that have emerged as a result of the trends described above will be difficult for many reasons, not the least of which is age discrimination. In a 2012 report to the UN General Assembly, the OHCHR noted<sup>67</sup>:

“Ageism”, or the discrimination against and stigmatization of individuals as they grow older, is widespread. Sometimes ageism is expressed in the form of recurring stereotypes and negative attitudes and practices; other times it is incorporated in laws and policies, such as in relation to recruitment or legal capacity to exercise their rights. Often it is at the root of isolation and exclusion of older persons, who are considered unproductive and therefore irrelevant. It is also intimately related to violence and abuse in public and private spheres. Furthermore, it is often exacerbated by other grounds for discrimination. Sex, disability, health or socioeconomic condition, place of residence, marital status and ethnic or religious backgrounds, to name a few, are often combined to the detriment of older persons.”

The OHCHR pointed out that “[a]ge-based discrimination has not been explicitly defined in human rights treaties” and that with certain limited exceptions (e.g., the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All Forms of Discrimination against Women) “references to age are scarce in any of the principal international human rights treaties”.<sup>68</sup> However, the OHCHR argued that protecting older persons against ageism was consistent with recognized definitions of discrimination in international human rights law that include “any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of the human rights and fundamental freedoms in any field”.<sup>69</sup>

<sup>64</sup> <https://www.un.org/en/sections/issues-depth/ageing/>

<sup>65</sup> See also [World Population Prospects 2019](#).

<sup>66</sup> Certain parts of the discussion of UN initiatives relating to aging are adapted from <https://www.un.org/en/sections/issues-depth/ageing/>

<sup>67</sup> [E/2012/51](#), Paragraph 18.

<sup>68</sup> *Id.*, Paragraph 19.

<sup>69</sup> *Id.* (citing Convention on the Elimination of All Forms of Discrimination against Women, Article 1; and Convention on the Rights of Persons with Disabilities, Article 2).



Since 1948 there has been almost 20 declarations, principles, resolutions, plans of action and proclamations issued by the UN and its instrumentalities relating to aging, and it is conceded that, in theory, most of the provisions in UN treaties and other instruments relating to human rights are intended to be universal and thus applicable to older persons as well as all other human beings.<sup>70</sup> Older persons are entitled to all of the recognized civil, political, economic, social and cultural rights described above, since such rights are universal and thus belong to all human beings.<sup>71</sup> Specific details on the application of such rights to older persons can be derived from provisions in various human rights treaties and declarations such as the elements of the International Bill of Rights and treaties that recognize the rights of special groups of persons (e.g., women and persons with disabilities) and would include human rights to<sup>72</sup>:

- An adequate standard of living including adequate food, shelter and clothing
- Adequate social security, assistance and protection, particularly in cases of retirement, sickness, invalidity and old age
- Freedom from discrimination based on age or any other status in all aspects of life including employment and access to housing, health care, and social services
- The highest possible standard of physical and mental health
- Be treated with dignity
- Work under fair working conditions and to have equal opportunity to be promoted subject to no considerations other than those of seniority and competence

<sup>70</sup> For a comprehensive overview of human rights of older people, see C. Martin et al., *Human Rights of Older People: Universal and Regional Legal Perspectives* (Springer, 2015). See also [Report of the UN High Commissioner for Human Rights on Human Rights Situation of Older Persons \(E/2012/51\)](#), Paragraphs 10-16 (discussing human rights of older persons in the context of existing international human rights instruments).

<sup>71</sup> The UN Committee on Economic, Social and Cultural Rights (“CESCR”) noted that the terminology used to describe older persons varies considerably, even in international documents and includes: “older persons”, “the aged”, “the elderly”, “the third age”, “the ageing” and, to denote persons more than 80 years of age, “the fourth age”. The CESCR opted for the use of “older persons”, the term employed in General Assembly resolutions 47/5 and 48/98, and this work generally follows that descriptive convention. [UN Committee on Economic, Social and Cultural Rights: The Economic, Social, and Cultural Rights of Older Persons: General Comment 6, UN Doc. E/C.12/1995/16/Rev. 1 \(August 12, 1995\)](#), Paragraph 9. The use of the descriptive term “older persons” in this work also reflects the findings of surveys of persons over a certain age that they find terms such as “elderly,” “aged,” and “old,” to be disrespectful and supportive of an inaccurate stereotype of frailty. See [M. Falconer and D. O’Neill, “Out with “the old,” elderly, and aged”, \*BMJ\*, 334 \(7588\) \(February 10, 2007\), 316](#). For further discussion of the debate surrounding the use of terms based on chronological age, see A. Gutterman, *Ageism: Where It Comes From and What It Does* (Oakland CA: Older Persons’ Rights Project, 2022).

<sup>72</sup> The list is adapted from a compilation prepared by the [Peoples Movement for Human Rights Learning](#). For example, selected clauses in Articles 2, 22 and 25 of the UDHR provide: “Everyone is entitled to all ... rights and freedoms ... without distinction of any kind.... Everyone, as a member of society, has the right to social security and is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity.... Everyone has the right a standard of living adequate for ... health and well-being.... including food, clothing, housing and medical care and necessary social services, and the right to security in the event of ... sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control....” See also ICESCR Articles 2, 7, 9, 11 and 12; ICCPR Articles 2, 7, 10 and 17; and Articles 11, 12 and 14 of the Convention on the Elimination of All Forms of Discrimination against Women.

- Protection from violence, neglect and all types of physical or mental abuse including cruel, inhuman or degrading treatment
- Full and active participation in all aspects of political, economic, social and cultural life of society and in decision-making concerning their well-being

Older persons are entitled to protections relating to the rights described above as citizens of the states that are signatories to the various treaties in which they are included; however, most of the provisions relating to older persons focus on “progressive implementation” of protections of economic, social and cultural rights, which are generally considered to be aspirational and lack the enforcement procedures and sanctions associated with the rights-based framework associated with civil and political rights. Moreover, the UN has yet to adopt a comprehensive universal legal instrument relating specifically to the human rights of older persons, and “age” is not explicitly referred to as a category protected from discrimination in the various instruments included in the International Bill of Human Rights.

According to the UN Committee on Economic, Social and Cultural Rights (“CESCR”), the failure of both the ICESCR and the UDHR to refer explicitly to age as one of the prohibited grounds for discrimination was not intentional, but rather “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>73</sup> The CESCR argued that the prohibition of discrimination on the grounds of “other status” could be interpreted as applying to age and that “while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the [CESCR], the range of matters in relation to which such discrimination can be accepted is very limited” and that “the unacceptableness of discrimination against older persons is underlined in many international policy documents and is confirmed in the legislation of the vast majority of States”.<sup>74</sup> The CESCR has also stated that since the ICESCR applies to all members of society, “it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant”.<sup>75</sup>

<sup>73</sup> [UN Committee on Economic, Social and Cultural Rights: The Economic, Social, and Cultural Rights of Older Persons: General Comment 6, UN Doc. E/C.12/1995/16/Rev. 1 \(August 12, 1995\)](#), Paragraph 11.

<sup>74</sup> *Id.* at Paragraph 12.

<sup>75</sup> *Id.* at Paragraphs 9-11. The Committee, which defined older people as those persons aged sixty or over, interpreted the omission of “age” from the prohibitions on discrimination was not done intentionally, but simply reflected that at the time the ICESCR was drafted the problem of aging did not seem to be as pressing as it had become when Comment 6 was prepared. For further discussion of General Comment 6, see [J. Miller, “International Human Rights and the Elderly”, \*Marquette Elder’s Advisor\*, 11\(2\) \(Article 6\) \(2010\), 343](#), 349-351. In addition, in its General Comment No. 18 to the ICCPR the Human Rights Committee stated that the grounds for discrimination are not limited to those expressly mentioned in the ICCPR by explaining that Article 26 of the ICCPR was an autonomous right and not intended to be duplicative of Article 2 of the ICCPR, which does include a reference to “age”. Accordingly, older people should be included among “all persons” who are to be treated equally before the law and entitled to equal protection of the law without discrimination under Article 26. [D. Rodríguez-Pinzón and C. Martin. “The International Human Rights Status of Elderly Persons”, \*American University International Law Review\*, 18 \(4\) \(2003\), 915](#), 936-937 and 952-954.

In addition, the CESCR has stated that states are obligated to promote and protect the economic, social and cultural rights of older persons, and states have made a series of pronouncements and commitments related to ensuring the realization of such rights.<sup>76</sup> For example, on December 14, 1973 the UN General Assembly considered and adopted an agenda item entitled “The Question of the Elderly and the Aged” in which it urged member states to “enhance the contribution of the elderly to social and economic development”, “discourage, wherever and whenever the overall situation allows, discriminatory attitudes, policies and measures in employment practices based exclusively on age” and “encourage the creation of employment opportunities for the elderly in accordance with their needs”.<sup>77</sup> On the same date, the General Assembly approved a separate resolution relating to “Social Security for the Aged” that called on Member States to provide older persons with “adequate social security payments”, “sufficient institutions for the care of aged persons requiring medical treatment”, “creative activities, which would give them moral satisfaction”, architectural facilities renovated with adequate attention to the needs of the aged and housing that is easily accessible to the aged.<sup>78</sup> However, the CESCR acknowledged that there was no comprehensive international convention relating to the rights of older persons, unlike the case of other population groups such as women and children, and concluded that the situation made it especially important for States to “pay particular attention to promoting and protecting the economic, social and cultural rights of older persons”.<sup>79</sup>

The OHCHR has pointed out that “[a]ge-based discrimination has not been explicitly defined in human rights treaties” and that with certain limited exceptions (e.g., the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All Forms of Discrimination against Women) “references to age are scarce in any of the principal international human rights treaties”.<sup>80</sup> However, the OHCHR argued that protecting older persons against age discrimination was consistent with recognized definitions of discrimination in international human rights law that include “any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of the human rights and fundamental freedoms in any field”.<sup>81</sup> The OHCHR went on to discuss age ceilings for the exercise of certain rights, such as the right to work

<sup>76</sup> Id. at Paragraph 13.

<sup>77</sup> Question of the Elderly and the Aged, G.A. Res. 3137 (XXVIII), Paragraph 3(c)-(e), UN GAOR, 28<sup>th</sup> Sess., December 14, 1973.

<sup>78</sup> Social Security for the Aged, G.A. Res. 3138 (XXVIII), Paragraph (a), (d), (g), UN GAOR, 28<sup>th</sup> Sess., December 14, 1973.

<sup>79</sup> [UN Committee on Economic, Social and Cultural Rights: The Economic, Social, and Cultural Rights of Older Persons: General Comment 6, UN Doc. E/C.12/1995/16/Rev. 1 \(August 12, 1995\)](#), Paragraph 13. Among other things, the CESCR called on States to adequately describe and discuss the situation of older persons in relation to all of their rights under international human rights instruments in the reports required of them as parties to those instruments. Id. at Paragraph 15 (also noting that “reports ... make little reference to this important issue” at that time).

<sup>80</sup> [E/2012/51](#), Paragraph 19.

<sup>81</sup> Id. (citing Convention on the Elimination of All Forms of Discrimination against Women, Article 1; and Convention on the Rights of Persons with Disabilities, Article 2).

in some jobs, and declared that “general exclusions based on age cannot be accepted unless there is a clear connection between an age-related limitation and the nature of the tasks to be performed”.<sup>82</sup>

In 1978 the UN General Assembly scheduled the first World Assembly on Aging, which was convened in 1982 and attended by 124 nations and produced the Vienna International Plan of Action on Ageing (“Vienna Plan”) that called for specific actions on issues such as health and nutrition, protecting elderly consumers, housing and environment, family, social welfare, income security and employment, education, and the collection and analysis of research data.<sup>83</sup> Nearly a decade later in 1991 the UN General Assembly adopted the UN Principles for Older Persons, which laid out 18 entitlements for older persons relating to the following<sup>84</sup>:

- “Independence” (i.e., basic provisions of food, water, shelter, clothing and health care, as well as the right to work and have access to education and training)
- “Participation” (i.e., rights to form associations and movements so that older persons can actively participate in the formulation and implementation of policies that impact their well-being)
- “Care” (i.e., rights to enjoy human rights protection regardless of whether the elderly person is living in their own home, in a treatment facility or in a shelter)
- “Self-fulfillment” (i.e., rights to the full development of their potential through access to cultural and educational facilities and resources)
- “Dignity” (i.e., rights to live in security and free of exploitation, abuse and discrimination)

In 1992 a Proclamation on Aging was adopted at the International Conference on Aging which included language in paragraph urging the support of national initiatives on ageing so that<sup>85</sup>:

- Appropriate national policies and programs for the elderly are considered as part of overall development strategies
- Governmental and non-governmental organizations collaborate in the development of primary health care, health promotion and self-help programs for the elderly
- Older persons are viewed as contributors to their societies and not as a burden
- Policies and programs are developed which respond to the special characteristics, needs and abilities of older women
- Families are supported in providing care

<sup>82</sup> Id., Paragraph 20 (also noting that restrictions to human rights can only be justified if they are objective and proportionate).

<sup>83</sup> [Report of the World Assembly on Aging, Vienna, 26 July-6 August 1982, UN Sales No. E.82.1.16 \(1982\).](#)

<sup>84</sup> See [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", American University International Law Review, 18 \(4\) \(2003\), 915, 948.](#) The UN Principles for Older Persons can be found in [UN Doc. A/RES/46/91 \(1991\).](#)

<sup>85</sup> See G.A. Res. 47/86, UN GAOR, 47<sup>th</sup> Sess. 89<sup>th</sup> plen. mtg., UN Doc. A/RES/47/5 (1992).

A second World Assembly on Aging held in Madrid in 2002 reviewed the recommendations of the Vienna Plan and adopted a Political Declaration and the Madrid International Plan of Action on Aging, generally referred to as the “Madrid Plan”, that “called for changes in attitudes, policies and practices at all levels to fulfil the enormous potential of ageing in the twenty-first century” and taking actions to “give priority to older persons and development, advancing health and well-being into old age, and ensuring enabling and supportive environments”.<sup>86</sup> A number of central themes run through the goals, objectives and commitments set out in the Madrid Plan<sup>87</sup>:

- The full realization of all human rights and fundamental freedoms of all older persons
- The achievement of secure ageing, which involves reaffirming the goal of eradicating poverty in old age and building on the UN Principles for Older Persons
- Empowerment of older persons to fully and effectively participate in the economic, political and social lives of their societies, including through income-generating and voluntary work
- Provision of opportunities for individual development, self-fulfillment and well-being throughout life as well as in late life through, for example, access to lifelong learning and participation in the community while recognizing that older persons are not one homogenous group
- Ensuring the full enjoyment of economic, social and cultural rights, and civil and political rights of persons and the elimination of all forms of violence and discrimination against older persons
- Commitment to gender equality among older persons through, inter alia, elimination of gender-based discrimination
- Recognition of the crucial importance of families, intergenerational interdependence, solidarity and reciprocity for social development
- Provision of health care, support and social protection for older persons, including preventive and rehabilitative health care
- Facilitating partnership between all levels of government, civil society, the private sector and older persons themselves in translating the Madrid Plan into practical action
- Harnessing of scientific research and expertise and realizing the potential of technology to focus on, inter alia, the individual, social and health implications of ageing, in particular in developing countries
- Recognition of the situation of ageing indigenous persons, their unique circumstances and the need to seek means to give them an effective voice in decisions directly affecting them

The Madrid Plan included detailed action plans for achieving various objectives relating to key issues identified for each of the three priority directions mentioned above. With respect to “older persons and development”, the Madrid Plan cited the following issues

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<sup>86</sup> See [Report of the Second World Assembly on Ageing, 1-43, UN Doc. A/CONF.1979, UN Sales No. E.02.IV.4 \(2002\)](#).

<sup>87</sup> Madrid Plan Paragraph 12.



and objectives: promoting active participation of older persons in society and development by recognizing the social, cultural, economic and political contribution of older persons and ensuring participation of older persons in decision-making processes at all levels; establishing employment opportunities for all older persons who want to work; rural development, migration and urbanization, which calls for improving living conditions and infrastructure in rural areas. alleviating the marginalization of older persons in rural areas and integrating older migrants within their new communities; guaranteeing access to knowledge, education and training for older persons by creating and maintaining equal opportunities throughout life with respect to continuing education, training and retraining as well as vocational guidance and placement services and through full utilization of the potential and expertise of persons of all ages, recognizing the benefits of increased experience with age; strengthening of solidarity through equity and reciprocity between generations (i.e., “intergenerational solidarity”); eradicating poverty among older persons; income security, social protection/social security and poverty prevention by promoting programs to enable all workers to acquire basic social protection/social security, including where applicable, pensions, disability insurance and health benefits, and providing sufficient minimum income for all older persons (paying particular attention to socially and economically disadvantaged groups); and protecting older persons during emergency situations by ensuring that they have equal access to food, shelter and medical care and other services during and after natural disasters and other humanitarian emergencies and involving older persons as active contributors to the reestablishment and reconstruction of communities and the rebuilding of the social fabric following emergencies.<sup>88</sup>

When discussing “advancing health and well-being into old age”, the Madrid Plan stressed the following issues and objectives: health promotion and well-being throughout life by reducing the cumulative effects of factors that increase the risk of disease and consequently potential dependence in older age, developing policies to prevent ill-health among older persons and ensuring that all older persons have access to food and adequate nutrition for all older persons; guaranteeing universal and equal access to health-care services by eliminating social and economic inequalities based on age, gender or any other ground, including linguistic barriers; developing and strengthening primary health-care services to meet the needs of older persons and promoting their inclusion in the process; developing a continuum of health care to meet the needs of older persons and involving older persons in developing and strengthening primary and long-term care services; older persons and chronic diseases, situations which need to be addressed by improving the assessment of the impact of chronic diseases on the health of older persons (both for those who are infected and those who are caregivers for infected or surviving family members), education and training for older persons living with chronic diseases and their caregivers (e.g., provision of adequate information and training in caregiving skills, treatment, medical care and social support) and enhancing and recognizing the contribution of older persons to development in their role as caregivers for children with

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<sup>88</sup> Madrid Plan Paragraphs 16-56.

chronic diseases and as surrogate parents<sup>89</sup>; improving information and training for health professionals and para-professionals on the needs of older persons; developing comprehensive services to meet the specific mental health needs of older persons ranging from prevention to early intervention, the provision of treatment services and the management of mental health problems in older persons; and addressing the challenges of older persons with disabilities by developing programs for the maintenance of maximum functional capacity throughout the life course and promotion of the full participation of older persons with disabilities.<sup>90</sup>

Finally, with respect to the third priority direction, “ensuring enabling and supportive environments”, the Madrid Plan stressed the following issues and objectives: housing and the living environment including promoting “ageing in place” in the community with due regard to individual preferences and affordable housing options for older persons and improving housing and environmental design to promote independent living by taking into account the needs of older persons in particular those with disabilities; care and support for caregiving by providing a continuum of care and services for older persons from various sources and support for caregivers and supporting the caregiving role of older persons, particularly older women; eliminating all forms of neglect, abuse and violence of older persons and creating support services to address elder abuse; and changing and improving images of aging by enhancing public recognition of the authority, wisdom, productivity and other important contributions of older persons.<sup>91</sup>

The Madrid Plan assigns primary responsibility for the implementation of the broad recommendations in the Plan to national governments, calling on states to formulate national development frameworks and poverty eradication strategies in consultation with all parts of civil society and the private sector. Other crucial elements of implementation mentioned in the Madrid Plan include: effective organizations of older persons; educational, training and research activities on ageing; and national data collection and analysis, such as the compilation of gender and age specific information for policy planning, monitoring and evaluation.<sup>92</sup> The Madrid Plan also calls for enhanced international cooperation to complement national development efforts, particularly to support developing and the least developed countries. At the international level, responsibility for implementation and ongoing review of the progress of the Madrid Plan has been vested in the UN Department of Economic and Social Affairs.<sup>93</sup>

At the UN Economic Commission for Europe (“UNECE”) Ministerial Conference on Ageing in September 2002 in Berlin, the Ministers committed to “mainstream ageing

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<sup>89</sup> The language in the Madrid Plan dealt specifically with issues confronting older persons as a result of the outbreak of HIV/AIDS during the period that the Madrid Plan was being developed and the text in this book expands the discussion to include all chronic diseases including the Covid-19 pandemic that arose decades after the Madrid Plan was announced. The discussion above regarding protection of older persons during emergency situations is also certainly applicable to how they were impacted by the pandemic.

<sup>90</sup> Madrid Plan Paragraphs 57-90.

<sup>91</sup> Madrid Plan Paragraphs 91-113.

<sup>92</sup> Madrid Plan Paragraph 119.

<sup>93</sup> <https://www.un.org/development/desa/ageing/madrid-plan-of-action-and-its-implementation.html>

concerns in all policy fields with the aim of securing gender-sensitive and evidence-based coordinated and integrated policies to bring society and economies into harmony with demographic change”.<sup>94</sup> The Ministers announced a series of commitments (in addition to “mainstreaming aging concerns, which was Commitment 1) that were to serve as the basis for the UNECE’s regional implementation strategy for the Madrid Plan, referred to as the “Madrid International Plan of Action on Ageing and the ECE Regional Implementation Strategy (MIPAA/RIS)”, which would be applicable equally to the health economic, labor market, social protection and education sectors. UNECE noted that all policies should “take into account the changes that occur in the situation of a person throughout life” and should combat discrimination based on age and “promote the dignity of older persons ... [to ensure] the respect that older persons deserve”.<sup>95</sup> Among the commitments adopted by the Ministers as part of the strategy were the following:

- **Commitment 2 - To ensure full integration and participation of older persons in society.** The Ministers noted that “[e]xisting international instruments reaffirm the principle that no individual should be denied the opportunity to participate in society and to benefit from economic and social developments” and that “[o]lder persons are at a greater risk of being denied that opportunity ... [due to] ... [a] combination of factors, including geographical mobility, urbanization, economic development and age-based inequalities in access to social institutions and the labor force [that] have resulted in age segregation and hamper[ed] the successful integration of older persons in society”.<sup>96</sup> Recognized that “[o]lder persons play crucial roles in families and the community ... [and that] ... [t]he knowledge older people have gained from life-long experience is an important asset for social and economic development”, the Ministers called for policies that further enhance the social, economic, political and cultural participation of older persons; promote the integration of older persons by encouraging their active involvement in the community and by fostering intergenerational relations; and promote a positive image of aging.<sup>97</sup>
- **Commitment 3 - To promote equitable and sustainable economic growth in response to population ageing.** The Ministers pointed out that “[p]opulation ageing ... [would] ... further increase the ration of the number of persons who are not employed to the number of those who are”, leading to an increase in “concerns about the financial sustainability of social protection systems in general and pension schemes in particular”.<sup>98</sup> The Ministers noted that “the fundamental economic issue is to share resources in an equitable and sustainable way between those employed and those not employed”, and that since “distribution and transfer issues are easier to address when the available resources are increasing at a sufficient rate” it was essential “that every effort be made to raise the underlying rates of economic growth

<sup>94</sup> [Regional Implementation Strategy for the Madrid International Plan on Ageing 2002, UN Economic Commission for Europe Ministerial Conference on Ageing \(September 2002\), ECE/AC.23/2002/2/Rev.6, Paragraph 2.](#)

<sup>95</sup> Id. at Paragraphs 5 and 8.

<sup>96</sup> Id. at Paragraph 10.

<sup>97</sup> Id. at Paragraphs 11 and 13-19.

<sup>98</sup> Id. at Paragraph 20.

and productivity in the UNECE region, ensuring in the process that growth is environmentally and socially sustainable”.<sup>99</sup>

- **Commitment 4 - To adjust social protection systems in response to demographic changes and their social and economic consequences.** The Ministers explained that “[s]ocial protection systems are usually seen as protecting individuals and their families from the risks and consequences of unemployment, major health setbacks, poverty and other contingencies arising from the vagaries of economic developments during the individual’s life cycle” and argued that policy decisions relating to social protection must preserve and strengthen the basic objectives of social protection, namely to prevent poverty and provide adequate benefit levels for all; establish or develop a regulatory framework for occupational and private pension provision; adapt existing social protection systems to demographic changes and changes in family structures; and pay special attention to the social protection of women and men throughout their life course.<sup>100</sup>
- **Commitment 5 - To enable labor markets to respond to the economic and social consequences of population ageing.** The Ministers argued that “[a]ppropriate labor market policies are likely to provide one of the most effective ways of responding to the economic challenge of ageing populations” and that “[i]ncreasing the awareness of the benefits of including older persons in the workforce and eliminating age barriers and discrimination in recruitment and employment of older workers is a priority”.<sup>101</sup> Specific policy objectives in this area mentioned by the Ministers included seeking a significant reduction in rates of unemployment, especially for older persons, by implementing active labor market policies (e.g., job matching, job-search assistance, training, vocational guidance, counselling etc.); improve the employability of older workers through vocational guidance and vocational training, based on life-long learning; raise participation rates for all women and men by, for example, improving care facilities and introducing arrangements that would make it easier for all workers, women and men, to combine work and family responsibilities; and take steps to raise the average effective age at which people stop working and make retirement more flexible and gradual.<sup>102</sup>
- **Commitment 6 - To promote life-long learning and adapt the educational system in order to meet the changing economic, social and demographic conditions.** The Ministers recognized the need to provide high quality education at all ages and that “traditional ordering of education, work and retirement is no longer valid” and that “[t]he educational system will necessarily have to be adapted in order to support increased flexibility during the life course”.<sup>103</sup> Policies in this area recommended by the Ministers included facilitating and encouraging life-long learning; promoting employability of older workers through access to professional training and retraining in order to support them in maintaining and further developing their specific knowledge and skills, which would require adjusting education institutions to the

<sup>99</sup> Id.

<sup>100</sup> Id. at Paragraphs 25-31.

<sup>101</sup> Id. at Paragraphs 32-33.

<sup>102</sup> Id. at Paragraphs 39-43. For further discussion, see A. Gutterman, *Older Persons’ Right to Work and Productive Resources* (Oakland CA: Older Persons’ Rights Project, 2022).

<sup>103</sup> Id. at Paragraphs 44 and 46.

needs of persons in retirement including early retirement; and preparing those who are about to retire through pre-retirement programs and adult educational schemes to help them adapt to changes in their lifestyle and to adjust to these changes (e.g., finding an alternative purpose in life through new interests and occupations).<sup>104</sup>

- **Commitment 7 - To strive to ensure quality of life at all ages and maintain independent living including health and well-being.** The Ministers affirmed that “[g]ood health is a vital individual asset, and at the same time a high overall level of health of the population is vital for economic growth and the development of societies” and called for policies that “promote life-long health, by reducing the risk factors, including the environmental, associated with major diseases, particularly chronic and noncommunicable diseases, through health promotion and disease prevention activities, by providing a continuum of affordable, accessible and quality health and social services”.<sup>105</sup> The Ministers called for addressing and achieving the following objectives in order to fulfill this commitment: promoting health and well-being over the entire life course, by mainstreaming health through inter-sectoral policies; ensuring equal access to health and social services including long-term care for persons of all ages; establishing policies and programs to provide conditions for independent living in the community, as well as health and long-term care for those who need them; ensuring appropriate financing of health and social services for persons of all ages; and enabling people to make healthy choices.<sup>106</sup>
- **Commitment 8 - To mainstream a gender approach in an ageing society.** The Ministers declared that “[a]ddressing the consequences of demographic change from a gender perspective is crucial for improving the situation of older persons, especially older women, in society and in the economy” and that “[t]he social and economic situation of women and men, especially for older persons, is not the same since they are affected differently by social, economic and demographic changes”.<sup>107</sup> The objectives of policies related to this commitment were sweeping and included achieving full gender equality, realizing full equality between women and men in their contribution in the economy; ensuring gender equality of access to social protection and social security systems; and promoting shared caregiving responsibilities of women and men within their families.<sup>108</sup>
- **Commitment 9 - To support families that provide care for older persons and promote intergenerational and intra-generational solidarity among their members.** The Ministers stated that “[t]he family is the basic unit of society and as such should be strengthened ... [through] ... comprehensive protection and support”.<sup>109</sup> The Ministers called for policies and services to respond to the needs and changing roles of individual family members, strengthen intergenerational and intra-generational solidarity and support families in coping with the social and economic consequences of demographic change (e.g., affordable, accessible and quality care services for children and other dependents; parental and other leave

<sup>104</sup> Id. at Paragraphs 48-54.

<sup>105</sup> Id. at Paragraph 55.

<sup>106</sup> Id. at Paragraphs 68-77.

<sup>107</sup> Id. at Paragraph 78.

<sup>108</sup> Id. at Paragraphs 81-85.

<sup>109</sup> Id. at Paragraph 86.



schemes; campaigns to sensitize public opinion and other relevant actors, such as businesses, regarding equal sharing of employment and family responsibilities between women and men; and housing policies and town planning to adapt town infrastructures to the needs of multi-generational families).<sup>110</sup>

The tenth and final commitment in the strategy was to promote the implementation and follow-up of the strategy through regional cooperation in the form of regular and continuous exchange of information, experience and best practices and creation of opportunities for civil society, including NGOs, and other relevant stakeholders to cooperate in the process.<sup>111</sup> Since 2002 countries within the region have been submitting national review reports and every five years the Standing Working Group on Ageing of the UNECE produces a synthesis report on the implementation of the Madrid Plan in the region over the five years leading up to the presentation of the report to the Ministers at their annual Ministerial Conference on Ageing. Presentation and discussion of those reports provides an opportunity for the Ministers to establish priority goals for the next five years, as they did at the Ministerial Conference on Ageing in Lisbon in 2017 when they agreed that member States in the region should prioritize recognizing the potential of older persons; encouraging longer working life and ability to work; and ensuring aging with dignity.<sup>112</sup>

In the report issued in June 2022 covering the events and actions in 2017-2022, and the Standing Working Group began by noting that from 2002, when the Madrid Plan was adopted, to 2022, “population aging has continued to transform the demographic structure of countries in the region ... [and during that period] ... the number of people who are 65 has risen by 70.3 million, and their proportion increased from 13.4 per cent in 2002 to 17.5 percent in 2022 ... [due to] ... rising life expectancy, enduring low fertility, as well as migration” and that “by 2050, persons 65 years old and above are expected to make up almost a quarter of the region’s population, while older persons aged 80 and above are projected to account for 8.7 per cent”.<sup>113</sup> The report went on to emphasize the following main findings<sup>114</sup>:

- Many countries recognized the importance of mainstreaming aging in public policies and integrating aging and older persons’ issues into long-term national development strategies
- Countries facilitated older persons’ participation in social and cultural life by providing various opportunities for volunteering, entertainment and physical and cultural activities tailored to their needs and preferences

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<sup>110</sup> Id. at Paragraphs 89-93.

<sup>111</sup> Id. at Paragraphs 94-95.

<sup>112</sup> See [A Sustainable Society for All Ages: Realizing the potential of living longer \(Proceedings of the UNECD Ministerial Conference on Ageing, Lisbon, September 20-22, 2017\)](#).

<sup>113</sup> [Synthesis report on the implementation of the Madrid International Plan of Action on Ageing in the ECE region in 2017-2022: Executive summary \(UNECE, 2022\)](#), Paragraphs 1-4 (also noting that the median age of the ECE population was set to rise from 39.5 years in 2020 to 43.9 years by 2050).

<sup>114</sup> Id at Paragraphs 12-24.

- Countries made efforts to promote a positive image of ageing and to counteract negative stereotypes and other manifestations of ageism against older persons through information campaigns, engaging the media and intergenerational dialogue
- Countries launched various initiatives promoting work and volunteering in intergenerational settings, aiming to enhance intergenerational solidarity, learning and dialogue and to promote a more realistic image of aging
- Significant attention was devoted to measures to combat unemployment among older persons, developing their skills, and promoting age management at the workplace and age-friendly working conditions including comprehensive rehabilitation and labor force reintegration programs
- Lifelong learning programs were improved and expanded in many countries to improve the employment prospects of older persons (e.g., efforts to increase digital skills and literacy to facilitate labor market and social participation among older persons) and promoting healthy ageing, improve financial literacy and facilitate the transition to retirement
- Countries encouraged longer working lives by adjusting pension systems using both direct measures (e.g., by raising and harmonizing retirement ages between women and men and/or restricting access to early retirement) and indirect incentives including the promotion of flexible and shared work and offering the possibility of cumulating pension and employment income or higher pensions in return for additional contributory years
- Countries addressed concerns regarding the long-term financial sustainability and adequacy of pensions in the face of demographic changes and rising costs of living by linking retirement age to life expectancy and raising pensions through revised indexation rules or additional allowances targeting older persons with the lowest pensions to combat the high incidence of poverty among older persons
- Countries took steps to compensate for and prevent the emergence of a gender pension gap by compensating for pension contributions during periods of care work and adopting measures to reduce the gender pay gap
- Countries increased their attention to the human rights, autonomy and self-determination of older persons by reforming legal guardianship rules and introducing measures to increase self-determination at the end of life and in palliative care settings
- Countries made advances in ensuring that older persons could stay in their preferred living environment for as long as possible and live independently in their communities with the assistance of integrated care and support infrastructures at the local level, assisted-living technologies and access to intergenerational or supported housing
- Countries implemented measures to prevent many types of abuse, violence and neglect against older persons (i.e., financial, mental and physical including in the health and social care sectors) including awareness-training, training to better detect and respond to cases of abuse and improved legislation and procedures to protect victims
- Ensuring quality and accessible health and social care for older persons was a priority for many countries with steps being taken to pilot, introduce, update or reform

frameworks to respond to the long-term health and social care needs of aging populations including quality assurance, integration, financial sustainability, decentralization and de-institutionalization of long-term care

- Many countries adopted measures to recognize and support the crucial role of informal and family caregivers in long-term care infrastructures and alleviate the strain created by heavy reliance on informal caregiving
- Countries continued to recognize and address the growing prevalence of dementia associated with increased longevity by adopting or updating strategies and action plans responding to the increasing burden of dementia and/or mental and behavioral disorders on health systems and on informal caregivers, with a particular focus on areas such as prevention, early diagnosis, awareness-raising, reduction of stigma, ethical treatment, autonomy and research, and supporting efforts to create more “dementia-friendly” living environments and communities

Not surprisingly, the Standard Working Group referred to the major disruptions during the period covered by the report caused by the Covid-19 pandemic, which not only brought adverse health and social impacts to older persons in the region who were among the most vulnerable population groups.<sup>115</sup> The pandemic also derailed efforts to achieve sustainable economic development for people of all ages in the region, progress that was necessary in order to ensure that there were sufficient resources to equitably support all generations.<sup>116</sup> The report did note that countries responded to the isolation of older persons caused by restrictions on movement by promoting volunteering and digital accessibility and literacy initiatives. The pandemic also caused countries to pay more attention to ensure the dignity and right to health of older persons in difficult health care decisions. In addition, countries moved to increase support to long-term care providers and expand access for older persons to medical treatments and vaccines. The report closed with calls to prioritize mainstream aging across all policies at all levels, promote active and health aging across the life course and make long-term care of choice accessible for all and support caregivers.<sup>117</sup>

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<sup>115</sup> The report noted: “The COVID-19 pandemic has had far-ranging implications for the economy and for society. However, it is first and foremost a health emergency which has affected millions across the ECE region, with particularly grave implications for older age groups. As has been widely reported, the fatality rate for older people is higher than for younger age groups, and while evidence shows significant variation in the infection-fatality ratio across geographic locations and as the virus developed over time, the mortality risk for older persons has been consistently significantly higher across data sources. Beyond the threat to life, the pandemic has put older people at greater risk of physical and social isolation, loneliness, discrimination and various human rights abuses, necessitating innovative responses beyond the economic and health domains.” Id. at Paragraph 8. For further discussion, see [A. Gutterman, Covid-19 and Older Persons \(Oakland CA: Older Persons’ Rights Project, 2021\)](#).

<sup>116</sup> For example, severe GDP contractions were observed in practically all countries in the region in 2020 and while recoveries occurred in 2021 due to massive monetary and fiscal stimuli the outlook for 2022 and beyond was uncertain due to inflationary pressures, unresolved supply chain disruptions, lingering concerns regarding ongoing outbreaks of Covid-19 and tensions in commodity markets due to war in Ukraine. Id. at Paragraph.

<sup>117</sup> Id. at Paragraphs 29-33.

Two decades after it was first announced the Madrid Plan remains a sweeping and bold agenda for handling the issues associated with aging in the 21<sup>st</sup> Century and provides governments, non-governmental organizations and other actors with a far-ranging menu of ideas for policies and programs. The Madrid Plan also integrates the challenges and opportunities in the lives of older persons with other frameworks for social and economic development and human rights.<sup>118</sup> There is now a substantial body of international standards and principles relating to the human rights of older persons including international instruments, general comments and recommendations by UN Treaty Bodies and ILO, UN policy instruments, UN resolutions and UN reports from the Secretary-General, Independent Experts and the OHCHR.<sup>119</sup> For example, the OHCHR issued a report in 2012 analyzing then-existing international instruments and gaps in the protection regime for human rights of older persons with respect to age discrimination; legal capacity and equal recognition before the law; long-term care; violence and abuse; access to productive resources, work, food and housing in old age; social protection and the right to social security; right to health and end-of-life care; old age and disabilities; and older persons in prison and access to justice.<sup>120</sup>

However, a 2011 report by the UN Secretary General intended to serve as a follow up to the Second World Assembly on Ageing noted that States' policies remained inconsistent and that there had been a failure to create a comprehensive legal, policy and institutional framework for the protection of the human rights of older persons and called out a lack of mechanisms of participation and accountability the unfortunate decision of some governments to choose "a welfare approach which may not ensure sustainability or long-term impact on the enjoyment of human rights without discrimination".<sup>121</sup> In addition, a resolution passed by the UN General Assembly itself in 2012 recognized that the different efforts to increase cooperation and integration and increase awareness of and sensitivity to aging issues since the adoption of the Madrid Plan had not been sufficient to promote full and effective participation by and opportunities for older persons in economic, social, cultural and political life.<sup>122</sup> Studies of the implementation and impact of broad initiatives such as the Madrid Plan have concluded that their goals have largely failed to be met and that little progress has been made in the development of national plans on aging and older persons continued to face challenges that undermined their social, economic and cultural participation including income security, access to age-appropriate health-care services, access to labor markets and social protection, protection from abuse and violence and age discrimination.<sup>123</sup>

<sup>118</sup> Id.

<sup>119</sup> See <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/InternationalStandards.aspx>

<sup>120</sup> [E/2012/51](#)

<sup>121</sup> Follow up to the Second World Assembly on Ageing, report 2011, (New York: United Nations Open-Ended Working Group on Ageing, 2011). UN Doc. A/66/173.

<sup>122</sup> See G.A. Res. 67/139, UN GAOR, 67<sup>th</sup> Sess., UN Doc. A/RES/67/139 (2013).

<sup>123</sup> [UN Commission for Social Development, Economic and Social Council, Further implementation of the Madrid International Plan of Action on Aging, 2002: Report of the Secretary-General, E/CN.5/2014/4 \(December 16, 2013\)](#). See also [UN High Commissioner for Human Rights, Normative Standards in International Human Rights Law in Relation to Older Persons: Analytical Outcome Paper](#), 3 (noting that an analysis of the normative standards in internal human rights laws in 2012 "supports the view that there is a

The Madrid Plan has also been criticized for its failure to call for the development of a specific international instrument that would afford the same types of protections to older persons that have been given to other vulnerable groups.<sup>124</sup> In 2010 the UN General Assembly established the Open-Ended Working Group on Ageing to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures such as a comprehensive international treaty to promote and protect the rights and dignity of older persons.<sup>125</sup> In 2014, the Human Rights Council established the position of Independent Expert on the enjoyment of all human rights by older persons with a mandate to address the specific challenges and vulnerabilities of older persons and to strengthen the protection of their human rights.<sup>126</sup> The Independent Expert oversees the realization and fulfilment of the human rights of older persons through strengthening the realization of those rights, closing protection gaps and providing advice on ways to strengthen the protection of the human rights of older persons. Among other things, it is expected that the Independent Expert will assess the implementation of national, regional and international standards relevant to the rights of older persons; identify, exchange and promote good practices relating to the promotion and protection of these rights; and report on developments, challenges and protection gaps in the realization of the rights of older persons.

In carrying out these activities, the Independent Expert will engage in dialogue and consult with States and other relevant stakeholders, including UN agencies, funds and programs, regional human rights mechanisms, national human rights institutions, older persons, civil society organizations and academic institutions, and work in close cooperation with States, assisting them when requested, in order to foster the implementation of measures that contribute to the promotion and protection of the rights of older persons.<sup>127</sup> The Independent Expert issues annual reports on issues related to the enjoyment of human rights by older persons covering topics such as accessibility, education, the right to work, violence and abuse, autonomy and care of older persons, the impact of automation on older persons, social exclusion, human rights of older persons in

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demonstrable inadequacy of protection arising from normative gaps, as well as fragmentation and a lack of coherence and specificity of standards as they relate to the experience of older persons”).

<sup>124</sup> [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 950-951](#) (also noting that there is no ILO convention with a specific provision on the question of age, although the ILO has developed in its Recommendation 162 standards for preventing the discrimination of older workers in employment, social security and retirement and that ILO's Recommendation 122 refers to employment policy regarding certain vulnerable groups, including the elderly).

<sup>125</sup> <https://social.un.org/ageing-working-group/>

<sup>126</sup> <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/Background.aspx>. The mandate was set out by the Council in its resolution 33/5 (as extended in the Council's resolution 42/12).

<sup>127</sup> The description of the duties and activities of the Independent Expert in this paragraph is adapted from [Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler \(UN General Assembly, July 2020\) \(A/75/205\)](#), Paragraphs 1-3.

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emergency situations and the impact of the coronavirus disease on the enjoyment of all human rights by older persons.<sup>128</sup>

In addition, the UN has noted that older persons are increasingly seen as contributors to development, whose abilities to act for the betterment of themselves and their societies should be woven into policies and programs at all levels, and commitments during various international forums focusing on development have included the following<sup>129</sup>:

- Development of systems of health care as well as systems of economic and social security and protection in old age, paying special attention to the needs of women
- Ensuring that older persons are able to meet their basic human needs through access to social services, social security, shelter and facilities for education and health
- Development of a social support system with a view to enhancing the ability of families to take care of elderly people within the family
- Ensuring that the necessary conditions are developed to enable elderly people to lead self-determined, healthy and productive lives and to make full use of the skills and abilities they have acquired in their lives for the benefit of society
- Elimination of all forms of violence and discrimination against elderly people in all countries, paying special attention to the needs of elderly women
- Ensuring that older persons have opportunities for full participation in their communities and society and in all decision-making regarding their well-being

Subgroups of older persons arguably benefit from the protections included in human rights instruments that have been created to address the rights of vulnerable groups of which an older person is also a member. The World Health Organization (“WHO”) noted that “[o]lder age often exacerbates other pre-existing inequalities based on race, ethnicity or gender ... experienced in earlier life in access to education, employment and health care, as well as those based on gender and race have a critical bearing on status and wellbeing in old age”.<sup>130</sup> The human rights of older women have often been called out for special attention. For example, Article 11(e) Convention on the Elimination of All Forms of Discrimination against Women calls for the recognition and protection of women’s rights to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work” and paragraphs 101, 106 and 165 for the Beijing Platform for Action provide:

<sup>128</sup> <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/Reports.aspx>. See also [Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler \(UN General Assembly, July 2020\) \(A/75/205\)](#), Paragraphs 9-25 (listing and describing illustrative duties of the Independent Expert in carrying out the duties of the position).

<sup>129</sup> Cairo Programme of Action paragraphs 6.17, 6.19, and 6.20 (International Conference on Population and Development in Cairo 1994); Copenhagen Declaration on Social Development paragraph.26 and Commitment 2 and Copenhagen Programme of Action paragraphs 24, 25 and 40 (Copenhagen 1995); Beijing Platform for Action, paragraphs 101, 106 and 165 (World Conference on Women in Beijing 1995); and Habitat Agenda paragraphs 17 and 40 (Habitat II Conference in Istanbul 1996).

<sup>130</sup> [Active Ageing: A Policy Framework \(Geneva: World Health Organization, 2002\)](#), 40. The WHO also observed that these inequalities are exacerbated for older persons who are poor since they generally lack access to health services, credit schemes, income-generation activities and decision making that are enjoyed by those in the small and comparatively well off portions of the aging population. Id. at 41.

"With the increase in life expectancy and the growing number of older women, their health concerns require particular attention.... Diseases of ageing and the interrelationships of ageing and disability among women ... need particular attention.... Actions to be taken: ... Develop information, programmes and services to assist women to understand and adapt to changes associated with ageing and to address and treat the health needs of older women.... Discrimination in ... hiring and remuneration, promotion ... continue to restrict employment, economic, professional and other opportunities ... for women.... Actions to be taken: ... Adopt and implement laws against discrimination based on sex in the labour market, especially considering older women workers, hiring and promotion, the extension of employment benefits and social security, and working conditions...."<sup>131</sup>

The Convention on the Rights of Persons with Disabilities (“CRPD”), which was adopted in 2006 and went into force in 2008<sup>132</sup>, is the first binding international instrument addressing the needs of persons with disabilities worldwide and has been praised as “a blueprint for how an elderly-specific treaty could be developed and what issues it could address”.<sup>133</sup> The CRPD is obviously focused on the human rights of persons with disabilities, regardless of their age, and does not single out older people for special protections; however, age is mentioned specifically in several places in the CRPD: Article 8 addresses stereotyping, a challenge for both persons with disabilities and older persons, by calling for adoption of immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; Article 13(1) calls on States to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages; Article 16(2) creates obligations on States to provide appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers to prevent exploitation, violence and abuse; Article 25(b) calls on States to promote disabled persons’ rights to health services by providing them with services designed to minimize and prevent further disabilities, including

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<sup>131</sup> See also C. Cox and M. Pardasani, “Aging and Human Rights: a Rights-Based Approach to Social Work with Older Adults”, *Journal of Human Rights and Social Work*, 2(3) (September 2017), 98 (noting that not only older women were especially vulnerable to discrimination but also other subgroups within the aging population including lesbian, gay, bisexual and transgender seniors and immigrants).

<sup>132</sup> [A/RES/61/106](#)

<sup>133</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527](#), 571-572 (also noting that the CRPD was a good model for an older persons’ convention or treaty because it illustrated the value of involving organizations of people with disabilities in the drafting process and rejected the “medical or social welfare model of disability that focuses on diagnosis and inability” in favor of “[a] human rights model that focuses on capability and inclusion and ways to prevent and remove the attitudinal and structural barriers” faced by persons with disabilities as they seek to become members of their communities).

among older persons and Article 28(2)(b) calls on States to take appropriate steps to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection and poverty reduction programs.

Commentators have argued that not only should older persons be entitled to the benefits of the negative obligation to prohibit discrimination found in international human rights instruments, they should also be the beneficiaries of positive duties imposed on states to adopt “special measures” to ensure that they enjoy human rights on condition of equality, as has been done for other vulnerable groups (e.g., women, persons with disabilities and persons subject to racial discrimination).<sup>134</sup> In fact, the CESCR has stated that elderly persons should be included within the notion of “socially vulnerable groups” and that there are many older persons “who do not have adequate means of support” and require special affirmative steps by states to the full extent of their available resources to achieve the protections and other rights to which they are entitled.<sup>135</sup> Special measures on behalf of older persons that states might take include preparing statistical data on the economic and social situation of the elderly; development of special programs targeting the elderly; and formally and independently identifying the elderly population as a group that requires special attention.<sup>136</sup>

Another concern vis-à-vis the framing of the civil and human rights of older persons is that the majority of the “international and regional instruments that have been enacted to enhance the rights of elderly people, as a group ... seem to perpetuate the view of older people as in need of protection, not as rights-holders”.<sup>137</sup> Advocates of this view point to the international law literature on topics such as “elderly” or “aging” and note that much of the work focuses on guardianship, the right to die and social security and has largely ignored rights of older persons to work and earn a living, to be integrated into their communities and to live freely with dignity and autonomy. They note that while there is soft law support for a right-based approach to the challenges facing older persons (e.g., the recognition of rights to independence, participation, care, self-fulfillment and dignity in the UN Principles for Older Persons), adequate protections will not be feasible unless

<sup>134</sup> [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 938-943](#) (noting that the Human Rights Committee, in interpreting the principle of non-discrimination and equality before the law, stated in General Comment 18 to its statement on Non-discrimination in U.N. Doc. HRI/GEN/1/Rev. 1 (1994) that: “[I]n a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions.”).

<sup>135</sup> See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Finland, UN ESCOR, Economic, Social and Cultural Rights Committee, 51<sup>st</sup> mtg., para. 21, UN Doc. E/C.12/1/Add.8 (1996) and [UN Committee on Economic, Social and Cultural Rights: The Economic, Social, and Cultural Rights of Older Persons: General Comment 6, UN Doc. E/C.12/1995/16/Rev. 1 \(August 12, 1995\)](#), Paragraphs 10 and 17.

<sup>136</sup> [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 942-943](#) (citing the Canadian Old Age Security Programme and the Guaranteed Income Supplement as formal state actions that contributed to lower poverty rates among older Canadians).

<sup>137</sup> [A. Kanter, "The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law", \*Georgia State University Law Review\*, 25 \(2009\), 527, 538.](#)

States assume the primary responsibility for ensuring equality and eliminating discrimination by signing on to a binding treaty or convention that include real commitments to ensuring that older persons enjoy the same human rights afforded to others in society.<sup>138</sup>

### Sustainable Development Goals and Older Persons

It has been argued that while there has been growing recognition of the rights of older persons (e.g., the 2002 Madrid International Plan of Action on Ageing (the “Madrid Plan”)<sup>139</sup> and other international mechanisms and initiatives), they have not benefitted from development gains in all contexts and have often been overlooked by development policies and discourse that have failed to sufficiently address their specific needs and rights.<sup>140</sup> Failing to take older persons and the global shift toward an aging population into account when considering development policies not only places older persons at risk, but also misses important opportunities to achieve long-standing development goals such as sustained economic growth, poverty eradication and sustainable development. In September 2002, five months after the adoption of the Madrid Plan, the Ministers attending the UN Economic Commission for Europe (“UNECE”) Ministerial Conference on Ageing in Berlin adopted a series of commitments to “mainstream ageing concerns in all policy fields with the aim of securing gender-sensitive and evidence-based coordinated and integrated policies to bring society and economies into harmony with demographic change”.<sup>141</sup>

The third commitment adopted by the Ministers in Berlin was “to promote equitable and sustainable economic growth in response to population aging”. The Ministers pointed out that “[p]opulation aging ... [would] ... further increase the ratio of the number of persons who are not employed to the number of those who are”, leading to an increase in “concerns about the financial sustainability of social protection systems in general and pension schemes in particular”.<sup>142</sup> The Ministers noted that “the fundamental economic issue is to share resources in an equitable and sustainable way between those employed and those not employed”, and that since “distribution and transfer issues are easier to address when the available resources are increasing at a sufficient rate” it was essential “that every effort be made to raise the underlying rates of economic growth and

<sup>138</sup> Id.

<sup>139</sup> See [Report of the Second World Assembly on Ageing, 1-43, UN Doc. A/CONF.1979, UN Sales No. E.02.IV.4 \(2002\)](#).

<sup>140</sup> See, e.g., [Ageing, Older Persons and the 2030 Agenda for Sustainable Development \(New York: United Nations Development Programme, July 2017\)](#), 13 (citing Ageing in the 21st century: A celebration and a challenge (New York: UNFPA and London: HelpAge International, 2012; and Leave No One Behind: Ageing, Gender and the 2030 Agenda. Issue Brief. (New York: UNDP, 2016)).

<sup>141</sup> [Regional Implementation Strategy for the Madrid International Plan on Ageing 2002, UN Economic Commission for Europe Ministerial Conference on Ageing \(September 2002\), ECE/AC.23/2002/2/Rev.6](#), Paragraph 2. The commitments were intended to serve as the basis for the UNECE’s regional implementation strategy for the Madrid Plan, referred to as the “Madrid International Plan of Action on Ageing and the ECE Regional Implementation Strategy (MIPAA/RIS)”, which would be applicable equally to the health economic, labor market, social protection and education sectors.

<sup>142</sup> Id. at Paragraph 20.

productivity in the UNECE region, ensuring in the process that growth is environmentally and socially sustainable”.<sup>143</sup>

Fifteen years later, at their Ministerial Conference on Ageing in Lisbon in 2017, the Ministers agreed that member States in the region should prioritize recognizing the potential of older persons; encouraging longer working life and ability to work; and ensuring aging with dignity.<sup>144</sup> The premise of these commitments and recommendations is that although increases in longevity and the shift toward an aging population do create resource challenges that must be taken into account in long-term national development strategies, older persons should be seen as willing and capable contributors to the economic growth that will be required in order to achieve sustainable development. In fact, member States have taken steps to mainstream aging in their public policies and have encouraged longer working lives by adjusting pension systems using both direct measures (e.g., by raising and harmonizing retirement ages between women and men and/or restricting access to early retirement) and indirect incentives including the promotion of flexible and shared work and offering the possibility of cumulating pension and employment income or higher pensions in return for additional contributory years, compensated for and prevented the emergence of a gender pension gap by compensating for pension contributions during periods of care work and adopting measures to reduce the gender pay gap and recognized and supported the crucial role of informal and family caregivers in long-term care infrastructures by adopting measures to alleviate the strain created by heavy reliance on informal caregiving.<sup>145</sup>

In its July 2017 Issues Brief on *Ageing, Older Persons and the 2030 Agenda for Sustainable Development* prepared with the support of HelpAge International and AARP, the UNDP stressed that preparing for an ageing population was vital to achieving the UN’s Sustainable Development Goals (“SDGs”) since ageing cut across a number of the SDGs relating to poverty eradication, good health, gender equality, economic growth and decent work, reduced inequalities and sustainable cities.<sup>146</sup> Notably, the Brief emphasized that it was not sufficient to treat older persons as a vulnerable group, although that was certainly important, but rather it was also time to recognize older persons “as the active agents of societal development in order to achieve truly transformative, inclusive and sustainable development outcomes”.<sup>147</sup>

<sup>143</sup> Id.

<sup>144</sup> See [A Sustainable Society for All Ages: Realizing the potential of living longer \(Proceedings of the UNECD Ministerial Conference on Ageing, Lisbon, September 20-22, 2017\)](#).

<sup>145</sup> [Synthesis report on the implementation of the Madrid International Plan of Action on Ageing in the ECE region in 2017-2022: Executive summary \(UNECE, 2022\)](#), Paragraphs 12-14.

<sup>146</sup> [Ageing, Older Persons and the 2030 Agenda for Sustainable Development \(New York: United Nations Development Programme, July 2017\)](#). For further discussion of SDGs, see A. Gutterman, *Sustainability Standards and Instruments* (New York: Business Expert Press, 2021), 51-62 and A. Gutterman, “SDG-Related Reporting” in *Sustainability Reporting and Communications* (New York: Business Expert Press, 2021), 77-103.

<sup>147</sup> [Ageing, Older Persons and the 2030 Agenda for Sustainable Development \(New York: United Nations Development Programme, July 2017\)](#), 7. The UNDP called for an integrated and multifaceted approach to reaching out to older persons and overcoming marginalization and intersectional discrimination including “sensitization of power structures, investing in public education, enforcement of anti-discrimination



According to the World Health Organization (“WHO”), ageing is an issue that is relevant to almost all of the SDGs, in particular in the ways that actions relating to the following SDGs can be focused on improving the functional ability of older people<sup>148</sup>:

- Goal 1: End poverty in all its forms everywhere—for all men and women
- Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture including for older persons
- Goal 3: Ensure healthy lives and promote well-being for all at all ages through universal health coverage including financial risk protection<sup>149</sup>
- Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5: Achieve gender equality and empower all women and girls
- Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- Goal 10: Reduce inequality within and among countries, by promoting the social, political and economic inclusion of all, irrespective of age
- Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable by providing universal access to safe, inclusive and accessible green and public spaces, in particular for older persons
- Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

For its part, the UN has argued that demographic trends, and making the right choices about policies and programs based on current and future population dynamics, plays an important role in the pursuit and achievement of the SDGs<sup>150</sup>:

“Population ageing can spur economic growth while maintaining fiscal sustainability, but policies and behavior play critical roles. There is no single best policy response (“silver bullet”) to respond to population ageing in all countries. How countries address population ageing depends on the fiscal space available to implement their tax and benefit programs, the extent to which societies agree on the values of redistribution and intergenerational equity, and the role they assign to government, families and individuals in financing consumption, particularly during old-age.”

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legislation and articulating in a compelling manner the gains for society if older persons are included in the development process”. Id. at 17.

<sup>148</sup> [Global strategy and action plan on ageing and health \(2016-2020\) \(World Health Organization, 2017\)](#), 1.

<sup>149</sup> The actual language of Goal 3 is “[t]o ensure healthy lives and promote well-being for all at all ages” and the WHO noted that the use of the words “for all at all ages” represented a shift from previous global health priorities that emphasized reduced mortality at younger ages.

<sup>150</sup> [World Population Prospects 2019 Highlights \(New York: United Nations Department of Economic and Social Affairs Population Division, 2019\)](#), 27.

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The UNDP Issues Brief referred to above highlighted several interrelated areas in which older persons can reasonably be expected to bring their experience, knowledge and skills to make significant contributions to the economy, the labor market and society at large<sup>151</sup>:

**“Economic development:** Older persons make substantial contributions to the economy through participation in the formal or informal workforce (often beyond retirement age), taxes and consumption, and transfers of assets and resources to their families and communities, and their broader retention in the workforce (among those who wish or need to continue working) has the potential to enhance labor productivity.<sup>152</sup>

**Unpaid care work:** Older persons, particularly older women, play a vital role in providing unpaid care for spouses, grandchildren and other relatives, including those with disabilities.

**Political participation:** With variation across contexts, older persons in some countries, notably in advanced democracies, can carry significant weight which is mostly associated with the concentration of economic resources and a tradition of political participation. As older persons continue to constitute an ever-greater proportion of the total population, they have the potential to be more influential in society.<sup>153</sup>

**Social capital:** Many older persons tend to be actively involved in community and civic life through volunteering, governance of public institutions, and participation in community-based institutions. This can contribute to strengthening social capital in terms of facilitating cooperation and improving interactions within and between groups based on shared values, trust and solidarity. Older generations are also often the important sources ... rare knowledge and skills, which can critically complement those of young people.<sup>154</sup>”

The UNDP called on UN agencies to act through partnerships, research and initiatives in order to<sup>155</sup>:

<sup>151</sup> [Ageing, Older Persons and the 2030 Agenda for Sustainable Development \(New York: United Nations Development Programme, July 2017\)](#), 11-13.

<sup>152</sup> Also noting that more older people are contributing to an entrepreneurial ecosystem based on new technologies that allow them to provide services through digital platforms, car or accommodation sharing and peer-to-peer lending (citing J. Lee, *Beyond Millennials: Valuing Older Adults’ Participation in Innovation District* (Washington, DC: Brookings Institution, 2017)).

<sup>153</sup> Noting that the fact that older persons tend to vote in greater numbers than young people can have important implications for social, economic and political outcomes and that older persons are increasingly involved in the formation of their own associations such as lobbying groups, political parties and grassroots organizations that create social support networks and enable access to essential services such as microcredit, health care, business loans and job training (citing A. Goerres, *The Political Participation of Older People in Europe: The Greying of Our Democracies*. (London: Palgrave Macmillan, 2009)).

<sup>154</sup> Noting, for example, that older persons in rural areas often have expertise in farming practices and know how to cope with environmental shocks and food shortages, which can be vital for rural communities to survive in times of crisis (citing *Ageing in the 21st century: A celebration and a challenge* (New York: UNFPA and London: HelpAge International, 2012)).

<sup>155</sup> [Ageing, Older Persons and the 2030 Agenda for Sustainable Development \(New York: United Nations Development Programme, July 2017\)](#), 19.

“— Mainstream ageing issues in their programs of work, while stressing the need to ensure that the rights of older persons, including to income, health, education, security, voice and participation are addressed;

— Adopt an explicit life-course approach in their research portfolios that is used to support guidance, programs and projects, while ensuring that more attention is paid to the situation of older persons by programs;

— Build in the intersection of ageing with other critical issues including poverty, health, gender, decent work, inequalities, disability, environment, governance and conflict;

— Enhance coordination and cooperation with global and regional intergovernmental organizations, bi- and multi-lateral development partners, international and national non-governmental organizations, the private sector, academia and other relevant stakeholders to develop sustainable partnerships and promote dignified ageing and issues related to older persons, while building on existing good practices in terms of global platforms, coalitions and agreements on shared programs of work;

— Support better collection, analysis, dissemination and use of age-disaggregated data; and advocate for the inclusion of data on ageing in national instruments, policies and reporting;

— Encourage national and local policy development and implementation to be human rights-based, age-sensitive and all-age-inclusive, with measurable indicators to track progress on the situation of older persons.”

The UN has identified key policy issues and recommendations, including the following<sup>156</sup>:

- Promoting gender equality in employment and adopting family-friendly policies (e.g., affordable child-care, paternal and maternal leave and part-time and flexible employment opportunities for both men and women) in order to improve female labor force participation and generate more rapid economic growth (SDGs 5 and 8).
- Eliminating age-related discrimination, including age barriers in employment, in order to reduce inequality, increase productivity and promote economic growth (SDGs 8, 10 and 16), and also promote and protect the rights and dignity of older persons who want to continue to work. Policies ideas in this area include promoting the recruitment of and flexible employment opportunities for older workers and providing support and incentives for self-employment (e.g., access to microcredit).
- Investing in education and health and wellbeing for all, including lifelong learning, in order to improve productivity and maintain economic growth even as the share of working-age population shrinks (SDGs 3 and 4). Public investments in children and youth need to be maintained or increased to develop and maintain the human capital necessary to support fiscal pressures for the health care and social security systems linked to the growing numbers of older persons, and investments in lifelong learning

<sup>156</sup> [World Population Prospects 2019 Highlights \(New York: United Nations Department of Economic and Social Affairs Population Division, 2019\)](#), 27-28.

can provide older workers with the skills necessary for them to remain in the workforce and contribute their high-level cognitive and socio-emotional skills.

- Promoting lifelong health and preventive care in order to maintain the maximum functional capacities of individuals and improve overall health and wellbeing (SDG 3). Key elements of this goal include ensuring continued and equitable access to disease prevention, treatment and rehabilitation during all stages of life; providing age-appropriate integrated care; and focusing on maintaining the intrinsic capacity of older persons.<sup>157</sup>

Other recommendations included promoting retirement savings to improve financial independence of individuals and increase aggregate capital accumulation (SDGs 3 and 8) (e.g., enhancing financial literacy, providing incentives for saving and easy or default enrollment processes for retirement savings programs); adopting properly targeted social security reforms to take into account the widening gap in longevity by socioeconomic status in order to reduce inequality (SDG 10) (e.g., indexing the statutory age at retirement by socioeconomic status, whereby the better-educated, higher income groups that enjoy longer life expectancies can expect to pay contributions longer and receive pensions later compared to the less educated, lower income populations); and establishing universal social protection with adequate benefits to reduce poverty and inequality and promote social inclusion (SDGs 1, 8 and 10).<sup>158</sup>

### Regional Human Rights Bodies and Instruments

In addition, while much of the attention regarding international human rights law focuses on the activities of the UN and the various human rights-related instruments promulgated as a result of UN activities, notably the UDHR, notice must be taken of other influential regional intergovernmental organizations that have been active in the establishment of mechanisms to promote and protect human rights including non-binding declarations or binding treaties. Examples include the Organization of American States, which has developed the American Declaration of the Rights and Duties of Man and created the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, each of which monitors states' compliance with the African Charter on Human and Peoples' Rights; the Council of the European High Commissioner for Human Rights, European Committee of Social Rights, and European Court of Human Rights, all of which seek to enforce the European Convention for the Protection of Human Rights and Fundamental Freedoms; and the ASEAN Intergovernmental Commission on Human Rights.<sup>159</sup>

<sup>157</sup> According to the World Health Organization, intrinsic capacity comprises all the mental and physical capacities that a person can draw on and includes their ability to walk, think, see, hear and remember, and the level of intrinsic capacity is influenced by a number of factors such as the presence of diseases, injuries and age-related changes. [World report on ageing and health \(Geneva: The World Health Organization, 2015\)](#).

<sup>158</sup> *Id.* at 28.

<sup>159</sup> What Are Human Rights? (International Justice Resource Center), <https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>

While it is true that there is a wide range of intergovernmental initiatives relating to human rights, most of them base their activities and decisions on universal and regional human rights treaties and non-binding instruments that are strikingly similar, and the tribunals of these initiatives are aware of and often rely on precedents from other jurisdictions when addressing human rights questions and issues of “first impression.” However, while convergence might be expected, the reality is that consistency among human rights tribunals around the world has yet to be achieved. Tribunals vary widely in terms of their experience, as measured by the number of years that they have been in existence and their caseloads, and decisions are also subject to and often limited by other factors such as the relevant jurisprudence as determined by which human rights instruments have been ratified by the state, and local political and cultural conditions. Individual and groups seeking to assert complaints regarding human rights violations must also consider the outcomes that can be expected from a particular tribunal in terms of remedies and the time and costs associated with prosecuting an action.<sup>160</sup>

### *Inter-American Human Rights System*

The world’s first international human rights instrument of a general nature, the American Declaration of the Rights and Duties of Man, also known as the Bogota Declaration, was adopted by the Member States of the Organization of American States (“OAS”) on May 2, 1948, seven months before the UDHR.<sup>161</sup> The Member States of the OAS first acknowledged the need for special protection of the social, economic and cultural rights of older persons in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, referred to as the “Protocol of San Salvador”, which was adopted on November 17, 1988 and came into force in 1999. Article 17 of the Protocol stated:

“Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make the right a reality and, particularly, to:

- a. Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;
- b. Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
- c. Foster the establishment of social organizations aimed at improving the quality of life for the elderly.”<sup>162</sup>

<sup>160</sup> Id.

<sup>161</sup> <http://www.oas.org/en/iachr/mandate/Basics/declaration.asp>

<sup>162</sup> See [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," Nov. 17, 1988, not in force, art. 17, O.A.S.T.S. 69, 28 I.L.M. 156 \(1989\), corrections at 28 I.L.M. 73, 1341 \(1989\) and 28 I.L.M. 156, 573, 1341, OAS Treaty](#)



Subsequent non-binding regional instruments that incorporated provisions relevant to human rights of older persons included the Andean Charter for the Promotion and Protection of Human Rights (2002), the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing (2003), the Brasilia Declaration (2007), the Plan of Action on the Health of Older Persons, including Active and Healthy Aging (2009) of the Pan American Health Organization, the Declaration of Commitment of Port of Spain (2009), and the San José Charter on the Rights of Older Persons in Latin America and the Caribbean (2012).

In 2015, the Member States of the OAS took a historic step forward by approving the Inter-American Convention on the Protection of the Human Rights of Older Persons in order to promote, protect, and ensure the recognition and full enjoyment and exercise, under conditions of equality, of all human rights and fundamental freedoms of the elderly, in order to contribute to their full inclusion, integration, and participation in society.<sup>163</sup> The Convention, among other rights, establishes the right to care for the elderly, the need to incorporate and give priority to the issue of aging in public policies, the importance of facilitating the formulation and compliance with laws and programs for the prevention of abuse, abandonment, neglect, mistreatment, and violence against the elderly, and the need to have national mechanisms that protect their human rights and fundamental freedoms. The Convention is the first regional instrument that specifically protects the rights of older people. The Convention entered into force on January 11, 2017, and there are seven States parties to the Convention.<sup>164</sup>

### *African Human Rights System*

The foundation of the human rights system in Africa is the African (Banjul) Charter on Human and Peoples' Rights, which came into effect on October 21, 1986, and oversight and interpretation of the Charter has been vested in the African Commission on Human and Peoples' Rights.<sup>165</sup> Compliance with the Charter by Member States of the African Union is also monitored by the African Court on Human and Peoples' Rights, which was created by a protocol to the Charter that came into effect in January 2004. The Charter protects every African citizen regardless of age and makes specific provisions for the protection of the rights of older persons, meaning those persons aged 60 years and above, under Article 18(4) of the Charter which stipulates that “[o]lder Persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs”.<sup>166</sup> A majority of the African countries have ratified

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[Series No. 69 \(1989\)](#). Article 9 of the Protocol also included rights to social security in old age. For critical discussion of the Protocol of San Salvador, see [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 993-1000.](#)

<sup>163</sup> [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-70\\_human\\_rights\\_older\\_persons.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp)

<sup>164</sup> <https://www.oas.org/es/CIDH/R/template.asp?File=/en/iachr/tr/pm/bdocuments.asp>

<sup>165</sup> [African \(Banjul\) Charter on Human and Peoples' Rights](#)

<sup>166</sup> See [African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58, 60 \(1982\)](#).

various additional international human rights instruments, such as the ICESCR, and agreed to the 1991 UN Principles for Older Persons and the Madrid Plan.

The African Union's 2002 Policy Framework and Plan of Action on Ageing recommended that Member States recognize the fundamental rights of older people and ensure the protection of those rights by committing themselves to abolish all forms of discrimination based on age and undertaking to ensure that the rights of older persons are protected by appropriate legislation, including the right to organize themselves in groups and to representation in order to advance their interests. The same Policy Framework and Plan of Action called for the elaboration and adoption of "an additional Protocol to the African Charter on Human and Peoples' Rights relating to the rights of Older Persons". Subsequently, paragraph 20 of the Kigali Declaration on Human Rights (2003) called for the development of a protocol on the protection of the rights of the elderly and persons with disabilities, and the African Union Social Policy Framework (2009) called for the implementation of all the tenets of the Policy Framework and Plan of Action described above and other international instruments relating to ageing and older persons.

On January 31, 2016, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa was adopted.<sup>167</sup> Article 2 of the Protocol provides that States Parties ensure that the core principles of the 1991 UN Principles (i.e., Independence, Dignity, Self-fulfilment, Participation and Care of Older Persons) are included in their national laws and are legally binding as the basis for ensuring their rights. Article 3 of the Protocol calls on States Parties to prohibit all forms of discrimination against older persons and encourage the elimination of social and cultural stereotypes which marginalize older persons; take corrective measures in those areas where discrimination and all forms of stigmatization against older persons continue to exist in law and in fact; and support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against older persons.

The Protocol also enumerates various rights and protections of older persons relating to access to justice and equal protection before the law; access to health services and education; protection against discrimination in employment; protection of older women and older persons with disabilities; right to make decisions; social protection; protection from abuse and harmful traditional practices; care and support and residential care; support for older persons taking care of vulnerable children; protection of older persons in conflict and disaster situations; participation in programs and recreational activities. In addition, the Protocol calls for focusing on aware of ageing and preparation for old age and includes a statement in Article 20 of the Protocol of the duties and responsibilities of older persons towards their families, communities, the wider society, the state and the international community to mentor and pass on knowledge and experience to the younger generations, foster and facilitate inter-generational dialogue and solidarity within their families and communities and play a role in mediation and conflict resolution.

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<sup>167</sup> [https://au.int/sites/default/files/pages/32900-file-protocol\\_on\\_the\\_rights\\_of\\_older\\_persons\\_e.pdf](https://au.int/sites/default/files/pages/32900-file-protocol_on_the_rights_of_older_persons_e.pdf)

As of March 2021, only 17 of the 55 countries in the African Union had signed the Protocol, and only Benin and Lesotho had actually ratified the Protocol. However, rights for older persons in line with those included in the Protocol have been incorporated into the national laws of various African countries.<sup>168</sup> For example, Section 9 of the Constitution of the Republic of South Africa provides that no person (including the state and private companies) may unfairly discriminate directly or indirectly against any person on a number of listed grounds including race, gender, religion, social origin and age. In addition, South Africa's Older Persons Act of 2006 gives effect to the rights in the Bill of Rights included in the country's Constitution in respect of older persons and aims to maintain and promote the status, wellbeing, safety and security of older persons.<sup>169</sup>

### *European Human Rights System*

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, was adopted in 1950 and came into force in 1953, and was the first instrument to give effect to certain of the rights stated in the UDHR and make them binding. The Convention established the European Court of Human Rights and has been praised as being the most effective international treaty for human rights protection and has had a significant influence on the national laws of the states that are members of the European Union. The Convention has been amended several times since 1950 and was subsequently joined by the European Social Charter, which first went into effect in 1961 and was substantially revised in 1996. The Revised European Social Charter is intended to guarantee fundamental social and economic rights of all individuals in their daily lives and improve their standard of living and social well-being. Article 23 of the Revised European Social Charter explicitly recognizes the right of elderly persons to social protection and call on states to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular<sup>170</sup>:

- To enable elderly persons to remain full members of society for as long as possible, by means of adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life and provision of information about services and facilities available for elderly persons and their opportunities to make use of them

<sup>168</sup> [Calls for UN convention on older people's rights amid pandemic ageism \(Devex\)](#) (citing “a lack of political will—and possibly a lack of awareness—amongst African governments when it comes to protecting older populations” and noting that “older people themselves [in Africa] are often not aware that they have rights and few organizations exist to advocate for them”).

<sup>169</sup> [Human Rights and Older Persons \(South African Human Rights Commission\)](#). South Africa is also a party to international and regional and agreements that commit the country to respect and protect the rights of older persons.

<sup>170</sup> See European Social Charter (Revised), entered into force Jan. 7, 1999, E.T.S. 163, 36 I.L.M. 31 (1997). In addition, Article 12 of the Revised European Social Charter provides that signatory nations will establish social security systems. For extensive discussion of Article 23 and related provisions of the Revised European Social Charter, see [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 976-993.](#)

- To enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of provision of housing suited to their needs and their state of health or of adequate support for adapting their housing and the health care and the services necessitated by their state
- To guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution

Among the extensive amendments to the Treaty of Amsterdam in 1997 was the introduction of a new non-discrimination provision in Article 13 which expressly conferred legislative competence on the Community to combat discrimination based on multiple grounds including sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Charter of Fundamental Rights, which was given binding force by the Treaty of Lisbon in 2009, includes Article 25, which drew on Article 23 of the Revised European Social Charter and states that the European Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.<sup>171</sup> In February 2014, the Committee of Ministers adopted Recommendation CM/Rec (2014) 2 to the member states on the promotion of the human rights of older persons, which explains that its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all older persons, and to promote respect for their inherent dignity.<sup>172</sup> The Recommendation affirms that older persons shall fully enjoy the rights guaranteed in the European Convention on Human Rights and the Revised European Social Charter, as well as other relevant international human rights instruments to the extent that states are bound by them, and call on states to ensure that older persons have access to sufficient information about their rights and are appropriately consulted, through representative organizations, prior to the adoption of measures that have an impact on the enjoyment of their human rights. The Recommendation also affirms that older persons are entitled to enjoyment of their rights and freedoms without discrimination on any grounds, including age, and calls on states to consider making explicit reference to “age” in their national anti-discrimination legislation. Other topics covered in the Recommendation include autonomy and participation; protection from violence and abuse; social protection and employment; care, including consent to medical care, residential and institutional care, palliative care; and administration of justice.

### ***ASEAN Human Rights System***

Development of a regional human rights system among the ten Member States of the Association of Southeast Asian Nations (“ASEAN”) has been slower than in other parts

<sup>171</sup> See Charter of Fundamental Rights of the European Union, 40 I.L.M. 266 (2001) (entered into force Dec. 7, 2000).

<sup>172</sup> [Council of Europe: Committee of Ministers, Recommendation CM/Rec \(2014\) 2 of the Committee of Ministers to member States on the promotion of human rights of older persons, 19 February 2014, CM/Rec \(2014\) 2.](#)

of the world. The ASEAN Intergovernmental Commission on Human Rights was established in 2009 to promote human rights in the ASEAN countries and the Commission drafted the ASEAN Human Rights Declaration, which was unanimously adopted by the Member States in November 2012.<sup>173</sup> The Declaration is not a binding treaty, instead it was intended to establish the commitment of the ASEAN Member States to certain fundamental human rights in line with the UDHR. For example, Articles 1 and 2 of the Declaration provide that all persons are born free and equal in dignity and rights and every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status. Article 4 of the Declaration states that the rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms. However, while acknowledging the intent of the drafters to track the UDHR, commentators have criticized the language used in the Declaration as weakening and eroding the universal human rights and fundamental freedoms contained in the UDHR.<sup>174</sup>

ASEAN has also adopted a series of collective commitments relevant to persons with disabilities and older persons including the Bali Declaration on ASEAN Community in A Global Community of Nations (Bali Concord III, 2011), Brunei Darussalam Declaration on Strengthening Family Institution: Caring for the Elderly (2010), Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community (2011), Proclamation of the ASEAN Decade of Persons with Disabilities 2011-2020: Towards Inclusive Society (2011), Joint Declaration and ASEAN Roadmap on the Attainment of the Millennium Development Goals in ASEAN (2009) and ASEAN Declaration on Strengthening Social Protection (2013).

The most significant instrument to date in ASEAN relating specifically to the human rights of older persons is the Kuala Lumpur Declaration on Ageing: Empowering Older Persons, which was adopted in November 2015. The Declaration was based on the recognition that an increase in the proportion of older population will require adaptation of health care and social support systems to meet this emerging challenge and the belief that the promotion of healthy, active and productive ageing in an enabling and supportive environment is key to the well-being of older persons as valuable members of the family, community and society. The Declaration called on each of the Member States of ASEAN to take the following concrete actions toward empowerment of older persons:

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<sup>173</sup> [ASEAN Human Rights Declaration](#).

<sup>174</sup> For example, in a [statement released on November 20, 2012](#), a spokesperson for the US Department of State expressed various concerns about the Declaration including the use of the concept of "cultural relativism" to suggest that rights in the UDHR do not apply everywhere; stipulating that domestic laws can trump universal human rights; incomplete descriptions of rights that are memorialized elsewhere; introducing novel limits to rights; and language that could be read to suggest that individual rights are subject to group veto. See also, e.g., [ASEAN Human Rights Declaration: a step forward or a slide backwards? \(November 20, 2012\)](#).



- Promote a shared responsibility approach in preparation for healthy, active and productive ageing by supporting families, care givers/care workers and strengthening communities in delivering care for older persons
- Promote intergenerational solidarity towards a society for all ages by raising public awareness on the rights, issues and challenges of old age and ageing
- Promote rights-based/needs-based and life-cycle approach and eliminate all forms of maltreatment on the basis of old age and gender through equitable access of older persons to public services, income generation, health care services, and essential information, as well as preventive measures, legal protection, and effective support system
- Mainstream population ageing issues into public policies and national development plans, and programs, which may include flexible retirement age and employment policies
- Promote the development of human capital and expertise in gerontology, geriatrics and other related professional and para-professional manpower including care workers to meet the current and future demands for health and social services for older persons
- Promote the development of reliable information, evidence-based and gender disaggregated data on ageing, including improved capacity to bridge the gaps in policy, research and practice
- Strengthen the capacity of government agencies, corporate bodies, civil society organizations, including voluntary welfare organizations, communities, and relevant stakeholders, for better coordination and effectiveness in the delivery of quality services for older persons at local, national and regional levels
- Encourage the development of older people's associations or other forms of networking including elderly clubs and volunteer networks in each ASEAN Member State by strengthening their capacity, and providing them with multisectoral platforms of dialogue with the government on ageing issues
- Promote age-friendly communities/cities in the region through sustainable and accessible infrastructure
- Build and strengthen the networking and partnerships within and among ASEAN Member States as well as with Dialogue Partners and Development Partners including UN Agencies, civil society organizations, private sector, and relevant stakeholders in supporting and providing adequate resources and effective implementation of the commitments reflected in the Declaration

The Declaration, which is not a binding treaty, mandated the ASEAN Ministerial Meeting on Social Welfare and Development, with the support of the Senior Officials Meeting on Social Welfare and Development, to coordinate and collaborate with relevant sectors for inter-sectoral cooperation on the empowerment of older persons and to develop a regional action plan on ageing to implement the Declaration.

### **Convention on the Human Rights of Older Persons**

Commentators have been critical of society's inability or unwillingness to respond quickly and decisively to addressing the challenges faced by large number of older persons around the world including discrimination, poverty and abuse.<sup>175</sup> They have attributed this to a lack of political will and prioritization of the special rights of other disadvantaged groups such as children, migrant workers, persons with disabilities and women, all of which have seen their particular needs recognized in international conventions and treaties explicitly affording them human rights protections while older persons continue to be overlooked or marginalized. Aging, likely disability and childhood, has been constructed as a social problem and as such responses have been influenced by the relevant social, economic, political and historical context. Societal understand of aging, and the behaviors of people toward and about the aging process, have been influenced not just by data but also by a range of "non-rational processes, fears, beliefs and perceptions".<sup>176</sup> The result has often been a set of proposed solutions for the problems of older persons that are limited, functional, piecemeal and reactive and which often lead to unintended adverse consequences as a result of changes in the socially constructed perception of aging and the needs and capacities of older persons.

One example of how seemingly well-intended policies can go awry is based on outcomes after the US and a number of other developed countries introduced pension systems during the 20<sup>th</sup> century as a means for managing retirement costs, compensating workers for long years of service and encouraging exit from the workforce at a certain age to open up opportunities for younger generations.<sup>177</sup> As time went by and age-related retirement was institutionalized in laws, regulations and the practices of employers in the public and private sectors, many older workers became subject to age discrimination and loss of employment opportunities without regard to their actual capabilities, a result that exacerbated economic insecurity for many older persons and made them more dependent on social assistance--dependence that was often resented by younger workers, thereby fueling intergenerational conflict. The policies led to a social construct that devalued older persons in the workplace based not on data but on stereotypes ground in false premises. Good intentions turned to outcomes that were actually prejudicial to the best interests of those that were intended to be the beneficiaries. Changing economic conditions at the beginning of the 21<sup>st</sup> century, as well as evolving perceptions and assumptions of "what old age should be like", have led to attempts to change policies regarding pensions (i.e., increasing the age of eligibility) and promote creating opportunities for those older persons willing and able to work to find ways to continue to participate. However, the process is slow since toxic assumptions that older persons are less valuable to society and "net takers" of economic resources are difficult to overcome.

Many have argued that it is appropriate to take into consideration the special circumstances of older persons when developing social and economic policies, just as it is when deciding how best to support other disadvantaged groups; however, constructing

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<sup>175</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\), 5.](#)

<sup>176</sup> *Id.* at 6.

<sup>177</sup> *Id.*

old age as a some sort of social “problem” is a risky proposition to the extent that it is based on stereotypical and discriminatory assumptions that “older persons are in some way separate from those who are not yet old—that the aged and the non-aged are two different categories of human beings”.<sup>178</sup> In this construct, older persons are often depicted as non-productive “burdens to society”, unable to contribute and thus candidates for marginalization, management through low quality and inadequately funded services and other actions that deprive them access to basic human rights that should be universally available. Social constructs like this, as they often do with other disadvantaged groups, create significant challenges that must be addressed. In the words of Fredvang and S. Biggs, “it is not old age per se that makes certain rights hard to enjoy, but a particular idea of old age that would deny the full enjoyment of their rights to the ageing”.<sup>179</sup> However, while work needs to be done on changing relevant social constructs, the explicit recognition of the specific rights of older persons in the form of an international convention or treaty “raises the profile of [the] issues” and “becomes a basis for action in different contexts and empowers advocates and members of that group to act”.<sup>180</sup> In addition, making certain rights explicitly applicable to older persons reduces the likelihood that they will be overlooked in a generic framework that does not refer to age but relies solely on inferences that may be ignored or lack practical authority because they are difficult to apply to contexts that are different than those for which they were originally developed.

International law in general, as well as international human rights law specifically, is a combination of various elements often categorized as “soft” and “hard” international law. “Soft law” has been described as codification of norms in various declarations and statement of principles that States agree to act in accordance with.<sup>181</sup> Soft law is “aspirational rather than strictly binding” and is to be contrasted with “hard” international law including customary law (i.e., norms and practices so widely accepted that they are considered binding for all States, regardless of any international organization membership) and positive international law (i.e., standards to which States explicitly bind themselves through signature and ratification of relevant treaties or conventions).<sup>182</sup> Since soft law is not intended, at least initially, to be binding on States, drafters often feel they have more freedom to create most expansive and detailed proposals, as was the case with the Vienna International Plan of Action on Aging, the UN Principles for Older

<sup>178</sup> Id.

<sup>179</sup> Id. at 7 (citing I. Doron and I. Apter, “The debate around the need for a new convention on the rights of older persons”, *The Gerontologist*, 50 (2010), 586).

<sup>180</sup> Id.

<sup>181</sup> [M. Fredvang and S. Biggs, \*The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)\*](#), 8.

<sup>182</sup> When a State ratifies a convention or treaty it signs on to certain basic characteristics of “hard law” including obligations to revise its own laws in line with the instrument, introduce policies and programs to implement the different parts of the instrument and submit to the instrument’s monitoring system that includes reporting to and possible investigations by a committee of independent experts called a “treaty body”. Reports are publicly available, thus putting States under greater scrutiny, and committees also have the power to examine and investigate individual complaints of rights violations. [Strengthening Older People’s Rights: Towards a UN Convention](#), 6.

Persons and the Madrid Plan; however, while soft law in and of itself is not binding it can nonetheless be quite influential, as has been the case with the UN's Universal Declaration of Human Rights ("UDHR"), and may ultimately evolve into customary law and serve as a basis for creating new treaties or conventions.<sup>183</sup>

There are many "hard law" instruments, treaties and conventions, that offer generic human rights protections that implicitly include older persons and "soft law" provisions, such as the Madrid Plan and comments on major international human rights standards such as the International Convention on Economic, Social and Cultural Rights (i.e., General Comment No. 6), that have become useful and authoritative guides in developing domestic standards and policies on issues relevant to the lives of older persons.<sup>184</sup> However, since soft law is, by its very nature, non-binding, there is less incentive for States to implement the associated standards and integrate them into their domestic laws and policies. Recognizing the shortcomings of relying on "soft law", the UN Open-ended Working Group on Aging was formed in 2010 to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures such as a comprehensive international treaty to promote and protect the rights and dignity of older persons.<sup>185</sup>

There are clearly widely divergent views among participants in the debates within the Working Group and elsewhere in the global community of human rights law. It is generally acknowledged, based on statements from member states and NGOs and other reports on progress toward the goals of the Madrid Plan, that there are significant normative and implementation gaps in the international framework for respecting the human rights of older persons; however, the global community has failed to reach a consensus on whether a new convention or treaty specifically focusing on the rights of older persons is the appropriate solution.<sup>186</sup> Some of the ways in which older persons see their basic human rights as provided in the Universal Declaration of Human Rights ("UDHR") continuously violated for reasons specific to ageist stereotyping and discrimination include the following<sup>187</sup>:

- Right to Freedom from Discrimination (UDHR Article 2): Older persons are often denied access to services, jobs or treated without respect because of their age and other factors such as gender or disability.

<sup>183</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 8.

<sup>184</sup> *Id.* at 13.

<sup>185</sup> <https://social.un.org/ageing-working-group/>

<sup>186</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 13.

<sup>187</sup> Adapted from [Strengthening Older People's Rights: Towards a UN Convention](#), 5 and [Why it's time for a convention on the rights of older people \(HelpAge International, 2009\)](#), 2-3.

- Right to Freedom from Violence (UDHR Article 3): Older persons are repeatedly subjected to violence and abuse that takes many forms including verbal, sexual, psychological and financial. In particular, many older persons, especially older women, experience violence in their homes (often at the hands of their own family members) or other caregiving settings as a result of traditional beliefs or in post-conflict situations.
- Right to Equality before the Law (UDHR Article 6): Many older people around the world do not have the identification papers necessary for them to prove who they are and realize all of the civil, political, economic, social and cultural rights (e.g., rights to claim free healthcare and/or non-contributory pensions).
- Right to Social Security (UDHR Article 22): Many older persons must live without any economic protection or social assistance such as non-contributory pensions or other forms of minimum income and social security they can rely on to stay above the poverty line.
- Right to Health (UDHR Article 25): Older persons are often denied affordable health and social care because of their age or receive poor or insufficient service due to ageist attitudes of care providers (i.e., older persons are not worth treating because they are no longer productive or active) or the failure of those providers to understand how to correctly treat age-related illnesses and conditions. Primary health care services typically do not include services that are designed to address the specific needs of older persons.
- Right to Work (UDHR Article 23): Older persons may be forced to stop working due to mandatory retirement age requirements or find they are deemed “unemployable” because of their age (in some countries, job advertisements are allowed to explicitly exclude persons over a specific age). Needing additional income, or seeking to maintain their dignity and a sense of purpose, older persons are forced to take low-paid jobs that are unsafe or demeaning because employers assume they cannot do any other type of work (older women often face an additional level of discrimination as they are generally paid less than older men for the same work, continuing a trend that spans the entire career path).
- Right to Property and Inheritance Rights (UDHR Article 17): Older women are denied their rights to property and inheritance in many parts of the world (sometimes being pushed out of their homes by family members) due to laws and practices, both statutory and customary, which deny women of all ages the right to own or inherit property when their husband is deceased.
- Right to Information (UDHR Article 19): States, businesses and other organizations often fail to make information relevant to realization of human rights readily available to older persons in a form that they can access, understand and effectively use (e.g., lack of information about childcare services, free medical insurance and treatment programs for infectious diseases).

### ***Arguments Against and For a Convention***

According to Fredvang and Biggs, arguments against a specific convention or treaty for older persons revolve around five main points: that universalism ensures the rights of all



groups and the rights of older persons are therefore sufficiently covered, albeit implicitly, in existing hard law instruments; that soft law protections are strong enough and are more likely to be adopted in local policies and the focus of advocates for older persons' rights should be on better implementation of existing instruments rather than creating something new and on lobbying agencies and governmental bodies that actually provide services to older persons; that a further convention would be too costly for something that essentially lacks teeth and would create additional accountability requirements that overburdened UN monitoring committees would not be able to manage effectively; there are paradoxes within conventions that work against the rights of specific groups (e.g., countries with poor human rights records may adopt such a convention so they can argue that they respect human rights but continue their traditional practices such that any recognized rights are merely superficial and fail to drive real social change); and that drawing attention to older people in this way will increase their social marginalization.<sup>188</sup>

In turn, arguments in favor of a new international convention or treaty for the benefit of older persons mentioned by Fredvang and Biggs<sup>189</sup> included that older people experience specific forms of rights violations based on their age (e.g. social ageism and discrimination in the workplace, health care and housing) such that a group-specific approach to human rights is appropriate<sup>190</sup>; diversity of definition—"older persons" are a heterogeneous group spanning a range of chronological ages and socio-economic contexts--should not inhibit the articulation of age-specific rights, just as it has not prevented the creation of separate conventions and treaties for other vulnerable groups based on gender, race and disabled status; there are normative gaps (i.e., areas where aspects of the lives of older persons are not adequately addressed by existing human rights instruments) that affect the dignity and economic security of older people (e.g., universal standards on rights within community-based and long-term care settings, legal planning for older age, guardianship and abolition of mandatory retirement ages)<sup>191</sup>; gaps

<sup>188</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 13-14 (citing I. Doron and I. Apter, "The debate around the need for a new convention on the rights of older persons", *The Gerontologist*, 50 (2010), 586; and F. Megret, "The human rights of older persons: a growing challenge", *Human Rights Law Review*, 11 (2011), 37).

<sup>189</sup> *Id.* at 14-15.

<sup>190</sup> See F. Megret, "The human rights of older persons: a growing challenge", *Human Rights Law Review*, 11 (2011), 37 (proposing that a strong case for a group-specific human rights approach can be made when the following elements exist: a definable population based on common characteristics or a shared experience; insufficient consideration of the needs of such a population by the existing human rights instruments; and distinct challenges in terms of specific rights, preferably across the range of guaranteed rights).

<sup>191</sup> [Strengthening Older People's Rights: Towards a UN Convention](#), 6. See also [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 16 (noting that normative gaps, which they described as existing "when a recurrent event (or act or structural factor) deprives human beings of their dignity", drove the creation of a new instrument specifically focused on issues relevant to women (i.e., the Convention on the Elimination of All Forms of Discrimination Against Women) based on the recognition that while the UDHR guarantees all its rights and freedoms to women and reaffirms that men and women are equal, women have been disproportionately affected by

in the implementation and monitoring of legal instruments in the existing human rights system prejudice older people (e.g., monitors rarely ask questions about older persons and mentions of older persons are rare in reports provided by States to the bodies that administer conventions and treaties)<sup>192</sup>; and drawing attention to older people in this way will strengthen the struggle against ageism.

Another concern vis-à-vis the framing of the civil and human rights of older persons is that the majority of the “international and regional instruments that have been enacted to enhance the rights of elderly people, as a group ... seem to perpetuate the view of older people as in need of protection, not as rights-holders”.<sup>193</sup> Advocates of this view point to the international law literature on topics such as “elderly” or “aging” and note that much of the work focuses on guardianship, the right to die and social security and has largely ignored rights of older persons to work and earn a living, to be integrated into their communities and to live freely with dignity and autonomy. They note that while there is soft law support for a right-based approach to the challenges facing older persons (e.g., the recognition of rights to independence, participation, care, self-fulfillment and dignity in the UN Principles for Older Persons), adequate protections will not be feasible unless States assume the primary responsibility for ensuring equality and eliminating discrimination by signing on to a binding convention or treaty that include real commitments to ensuring that older persons enjoy the same human rights afforded to others in society.<sup>194</sup>

Fredvang and Biggs argued that a new instrument devoted to the human rights of older persons was required in order to recognize and address the distinctive challenges faced by members of that group including discrimination (i.e., older persons are routinely treated differently because of their age in both interpersonal and institutional settings), poverty caused by various factors including mandatory retirement ages and lack of access to pensions or adequate social assistance and violence and abuse in many forms, as well as the need to ensure the guarantee the rights of older persons in relation to their physical and mental health (i.e., rights to a reasonable quality of life, information, privacy, personal integrity and freedom of movement and rights to affordable health services without fear of being denied treatment and care because of age-based criteria).<sup>195</sup>

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economic inequalities and poverty, unequal access to education, training, and health care that have led to normative gaps in their human rights protections).

<sup>192</sup> Id. at 7. See also [M. Fredvang and S. Biggs, \*The rights of older persons: Protection and gaps under human rights law\* \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 16-17 (noting that an “implementation gap occurs when nation-states fail to pass domestic legislation, or do not establish procedures and institutions that are required to implement an international standard” and citing data from various reports from States to human rights reporting bodies to conclude that “many states are ‘age-blind’ in their reporting”).

<sup>193</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527](#), 538.

<sup>194</sup> Id.

<sup>195</sup> [M. Fredvang and S. Biggs, \*The rights of older persons: Protection and gaps under human rights law\* \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 17-18.

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Fredvang and Biggs were particularly interested in the ways in which a specific convention or treaty would facilitate activities that would address existing normative and implementation gaps including increasing the allocation of States' resources towards older persons (including funding for training people involved in older persons' issues, thus raising awareness and competence), expanding the ability of human rights advocates to monitor the situation in their countries and lobby governments to incorporate their obligations under international law into domestic law, framing older persons' issues as an integral part of the broader international human rights agenda and articulating new precepts and elaborating on the duties of States as well as the private sector and individuals towards older persons.<sup>196</sup> They noted that as efforts to promote a new UN convention or treaty continued, advocates should educate the general public on the need for such an instrument and “work with technical agencies such as World Health Organization and the International Labour Organization to elaborate standards on specific issues of relevance to older people”.<sup>197</sup>

The Global Alliance for the Rights of Older People noted that “ageing brings with it particular vulnerabilities to discrimination and rights violations and the existing human rights instruments are not enough to provide the necessary protection for older people, both in law and practice” and argued that a single instrument, a new international convention on the rights of older people, is necessary to<sup>198</sup>:

- Provide a definitive, universal position that age discrimination is morally and legally unacceptable
- Provide legally binding protection with accompanying accountability mechanisms
- Provide clarity for duty bearers and rights holders on what their rights and responsibilities are towards older people
- Bring together existing rights standards that are currently dispersed throughout various other instruments and interpretive documents
- Redress the present imbalanced focus on older people's economic and social rights by bringing all indivisible rights into one instrument
- Put age discrimination and older people's rights more centrally onto governments', donors' and NGOs' agendas
- Draw attention to, deepen understanding of and provide redress for the complex, multiple forms of discrimination that older women and men experience
- Provide a framework to guide policy responses to demographic ageing based on rights, equity and social justice
- Provide a powerful advocacy and education tool for older people and those that represent them for claiming their rights

<sup>196</sup> Id. at 18-19.

<sup>197</sup> Id. at 19.

<sup>198</sup> [Why do we need a convention for older people? – The Global Alliance \(rightsofolderpeople.org\)](https://www.rightsofolderpeople.org/) See also [Strengthening Older People's Rights: Towards a UN Convention](#), 8 (arguing that a convention would combat ageism and age discrimination, change people's lives, clarify responsibilities, improve accountability and guide policymaking).

- Encourage a paradigm shift from older people being considered recipients of welfare, to older people as rights holders with responsibilities

A report prepared by groups within the ABA in August 2018 noted that “[w]hile there are a good number of existing human rights instruments and mechanisms that, in theory, offer potential to protect the rights of older persons, this potential is seriously diluted by the lack of specificity, depth, comprehensiveness, and consistency”, and went on to criticize existing human right law for being largely silent on important topics such as<sup>199</sup>:

- Rights within community-based and long-term care settings, both for the caregiver and for the person receiving care
- Legal planning mechanisms for older age
- The abolition of mandatory retirement ages
- Legal capacity and equality before the law for older women and men under guardianship or diagnosed with dementia
- The right to access to health care, which in existing human rights instruments, fails to address nursing homes and other institutional isolation and rights to home and community-based care
- End-of-life rights, including access to palliative care
- Elder abuse and exploitation in its many forms across cultures, including violence as a result of witchcraft accusations in some cultures
- Property rights in old age, the loss of which especially impact older women
- Rights to economic security in the face of worldwide population aging
- Existing human rights law only offers limited protection against the negative impact of the actions of the private sector and individuals within families

Commentators who have advocated for recognizing older persons as members of a disadvantaged group requiring heightened protection have argued that such status for the elderly is an indication of the importance of creating for them a specific international human rights treaty that addresses their needs in a specific manner, as has already been done for other similar groups such as women, children, refugees and persons with disabilities.<sup>200</sup> The OAS Convention has been praised by the UN Independent Expert to the Human Rights Council as “an example of good practice that could inspire other regions, as it allows States to strengthen cohesion and normative action and to clarify States’ obligations with regard to the rights of older persons”.<sup>201</sup> The UN Convention on the Rights of the Child also provides an interesting model, given that it is the only treaty-covered group defined on the basis of age, and the following comment by the Committee on the Rights of the Child on one state’s failure to implement the principle of non-

<sup>199</sup> Report to the ABA House of Delegates in August 2018 by the ABA’s Commission on Law and Aging and Section of International Law, 3-4.

<sup>200</sup> [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", \*American University International Law Review\*, 18 \(4\) \(2003\), 915, 946.](#)

<sup>201</sup> Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, A/HRC/33/44, para. 21 (July 8, 2016), [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/33/44](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/44).

discrimination with respect to children is a useful reference point to subjects of vulnerability for older persons:

“The Committee notes with concern that the principle of non-discrimination is not adequately implemented with respect to certain vulnerable groups of children, including children living in conflict areas, children living in institutions, children living in the mountainous regions, children with disabilities, children of single parent families, children of poor families, children in conflict with the law, children living and/or working on the streets, refugee children and internally displaced children. The Committee is particularly concerned about their limited access to adequate health, education and other social services.”<sup>202</sup>

As a general matter, non-governmental organizations have consistently been in favor of a convention or treaty specifically focused on the human rights of older persons; however, many of the most powerful Member States of the UN have expressed their opposition.<sup>203</sup> Chief among them has been the US, consistent with its views on other international treaties and conventions. Kanter noted that while “the United States has prided itself as a champion of human rights throughout the world, the United States has been reluctant to sign many international human rights treaties” and, in fact, had not ratified well-known treaties or conventions such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Economic, Cultural and Social Rights and is known to have “one of the lowest [International Labor Organization] ratification rates in the world”.<sup>204</sup> Among the reasons given by policymakers for this position has been a belief that national legislation, as opposed to international law, was the most effective way to ensure non-discrimination and that ratification of international treaties and conventions, would “jeopardize basic rights rooted in the U.S. Constitution and ... erode the American legal system at large”.<sup>205</sup>

<sup>202</sup> See Concluding Observations of the Committee on the Rights of the Child: Georgia, UN ESCOR, Rights of the Child Committee, 24<sup>th</sup> Session, 641<sup>st</sup> mtg., Paragraph 24 (UN Doc. CRC/C/15/Add. 124 (2000)).

<sup>203</sup> [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#), 13 (noting that while South American nations as a group as well as NGOs have been in favor of a legally binding instrument, other influential Member States including the US, New Zealand, Canada, China, Switzerland, Norway and Russia, together with the European Union, have made it clear that they prefer to rely on stronger use of those instruments which already exist). In the years following the publication of the article, it was Latin America that broke ground by adopting the Inter-American Convention on the Protection of the Human Rights of Older Persons, the first regional instrument that specifically protects the rights of older people. See [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-70\\_human\\_rights\\_older\\_persons.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp)

<sup>204</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, Georgia State University Law Review, 25 \(2009\), 527](#), 567-571 (noting that the US has signed only two out of eight conventions that the International Labor Organization describes as being “fundamental to the human rights of workers”).

<sup>205</sup> *Id.* at 568 (citing P. Donnolo and K. Azzarelli, “Ignoring the Human Rights of Children: A Perspective on America’s Failure to Ratify the United Nations Convention on the Rights of the Child”, *Journal of Law and Policy*, 5 (1996), 203, 209).



The position of the US on the Inter-American Convention on Protecting the Human Rights of Older Persons, which was approved by the General Assembly of the Organization of American States (“OAS”) in June 2015, as well any other convention or treaty on the rights of older persons, was clearly laid out in a statement by a US State Department official to the American Bar Association (“ABA”) Commission on Law and Aging in August 2016<sup>206</sup>:

“[T]he U.S. has consistently opposed the negotiation of new legally binding instruments on the rights of older persons. The U.S. recognizes the importance of using the OAS and the UN to address the challenges older persons face in this hemisphere and throughout the world, including the enjoyment of their human rights. However, the U.S. does not believe that a regional convention is necessary to ensure that the human rights of older persons are protected. Rather than promoting a new instrument, the U.S. believes resources of the OAS and its member states should be used to identify practical steps that governments in the Americas might adopt to combat discrimination against older persons, including best practices in the form of national legislation and enhanced implementation of existing international human rights treaties. In doing so, such efforts should be aimed at addressing immediately and in practical ways the challenges faced by older persons.”

### ***Impact of Covid-19 Pandemic***

The first US case of Covid-19 was confirmed at a Kirkland, Washington nursing home in late February 2020 and in the year that followed nursing homes and assisted-living facilities suffered through more than 1.1 million cases among their residents and staff members and more than 129,000 deaths.<sup>207</sup> In fact, *The New York Times* reported that 5% of all cases and more than a third of the Covid-19-related deaths in the US during that

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<sup>206</sup> Email communication from Judith Heumann, Special Advisor for International Disability Rights U.S. Department of State, August 11, 2016, to Charles Sabatino, the Director of the ABA Commission on Aging, as cited in the Report to the ABA House of Delegates in August 2018 by the ABA’s Commission on Law and Aging and Section of International Law relating to a resolution approved by the House of Delegates at that time supporting in principle the OAS Convention and encouraging the UN to draft a convention on the rights of older persons using the OAS Convention as an instructive precedent. See also [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527, 567-571](#) (noting that while “the United States has prided itself as a champion of human rights throughout the world, the United States has been reluctant to sign many international human rights treaties” and, in fact, has not ratified well-known treaties or conventions such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Economic, Cultural and Social Rights and is known to have “one of the lowest [International Labor Organization] ratification rates in the world”).

<sup>207</sup> [J. Silver-Greenberg and R. Gebeloff, “To Lift Ratings, Nursing Homes Shroud Neglect”, \*The New York Times\* \(March 14, 2021\), 1](#). Reports from several states including [Indiana](#) and [New York](#) have raised concerns that deaths in nursing homes may have been significantly underreported, perhaps by as much as one in ten deaths in those facilities during the period, which means that the total number of deaths will eventually be much higher, particularly if similar reporting issues are discovered in other states.

year were linked to nursing homes, including both residents and staff, even though less than 0.5% of the country's population lived in them.<sup>208</sup> The number of cases and deaths continued to climb as the pandemic surged into its second year and data from the Public Policy Institute and the Kaiser Family Foundation indicated that by the end of July 2021 there had been about 1,468,000 cases across 35,000 facilities, nearly one out of every 10 nursing home residents in the US had died from Covid-19 and the death toll among the residents and staff members of nursing homes and other long-term care facilities around the US had reached 186,000 (31% of the total for the country).<sup>209</sup> Beyond nursing homes, the toll that the pandemic took on all persons aged 65 or older has been sobering: as of September 2020, eight out of ten Covid-19-related deaths in the US had been in that age group and 94% of the deaths in Europe, on average across all of the European countries, were among people over the age of 60 during the periods that the outbreak was most severe.<sup>210</sup>

According to a policy briefing jointly prepared by *Foreign Policy* and AARP, the pandemic cast a harsh light on a number of institutional shortcomings and risks to the human rights of older persons including “chronic deficiencies in long-term care facilities, as well as ageism and discrimination in health care settings”, exacerbated abuse and violence against older adults and worsened isolation, poverty and unemployment among older adults due to the restrictions that were imposed to combat the virus.<sup>211</sup> In her report on the impact of the Covid-19 pandemic on the human rights of older persons, the UN's Independent Expert on the Enjoyment of All Human Rights by Older Persons also called out the adverse implications for older persons during emergency situations due to the lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of older persons including the failure to provide adequate coverage in crucial areas such as legal capacity, quality of care, long-term care, palliative care, assistance to victims of violence and abuse, available remedies, independence and autonomy, and the right to an adequate standard of living, in particular with regard to housing.<sup>212</sup>

<sup>208</sup> [More Than One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes, \*The New York Times\* \(February 26, 2021\).](#)

<sup>209</sup> [COVID-19 Nursing Home Resident and Staff Deaths: AARP Nursing Home Dashboard and State COVID-19 Data and Policy Actions \(Kaiser Family Foundation\)](#) (website that maintains continuously updated statistics relating to impact of pandemic in long-term care facilities). As of the end of July 2021, the “official” Covid-19 death toll in US nursing homes had reached more than 133,000, accounting for more than 1 in 5 of the nation's pandemic fatalities up to that time, and the official number of cases among residents of nursing homes at that time was more than 662,000. [M. Cottle, “Nobody Wants to Live in a Nursing Home. Something's Got to Give”, \*The New York Times\* \(August 1, 2021\)](#) (citing [Covid-19 Nursing Home Data \(Data.CMS.gov\)](#)).

<sup>210</sup> [Human Rights & Older Persons: How COVID-19 is compounding vulnerabilities of older adults \(Foreign Policy and AARP, September 2020\)](#), 1-2 (also noting that concentrated outbreaks and high fatality rates in long-term care facilities were also documented in the United Kingdom and across Europe and other parts of the world). For further discussion of Covid-19 and older persons, see [A. Gutterman, \*Older Persons' Rights to Physical and Mental Health\* \(Oakland CA: Older Persons' Rights Project, 2022\)](#).

<sup>211</sup> *Id.*

<sup>212</sup> [Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler \(UN General Assembly, July 2020\) \(A/75/205\)](#), Paragraph 78.

A group of researchers argued that many aspects of society's response to the Covid-19 pandemic vividly exposed the need for a separate international treaty or convention to recognize and protect the human rights of older persons, many of whom died unnecessarily and also found themselves subjected to "deterioration of cognitive, mental and physical health, unmet health and other support needs, increased poverty, discrimination, abuse, vilification and stigmatization", and then went on to offer the following views on improvements that would follow from adopting an international convention or treaty to recognize and protect the rights of older persons<sup>213</sup>:

- Ageism would be recognized and treated as a violation of human rights in the same manner as racism, sexism or ableism and age-based restrictive measures proposed in response to future emergencies would be subjected to the same level of scrutiny afforded measures that are based on other prohibited grounds for discrimination such as race, sex or disability (i.e., restrictions must be necessary, proportionate, non-discriminatory and regularly reviewed throughout the crisis to take into account new information and changing circumstances).
- When making policy decisions and establishing procedures to implement those decisions, states would "take deliberate steps to ensure older persons enjoy equality in reality" such as mitigating the adverse impact of physical distancing requirements on older persons by providing support for their access to information and communications tools. In addition, states would be required to involve older persons in the development and implementation of policies impacting their lives and access to their human rights.
- States would be encouraged to adopt policies and programs to address and eliminate ageism including efforts to build cohesive communities with stronger inter-generational relationships based on mutual understanding and respect for the role and contributions of older persons.
- Autonomy and independence of older persons would be recognized and a basis would be provided for shifting away from traditional ageist and paternalistic assumptions about older persons to new policies that promote and support older persons' ability to make their own decisions consistent with their wishes, values and preferences.
- Older persons' rights to care and support would be recognized as fundamental and ensure that appropriate policies and programs are implemented to expand and improve care and support systems and promote independent living (e.g., better monitoring and rights-based regulation, training and better working conditions for caregivers in home and community settings and investment in community-based facilities that provide viable alternatives to the risks associated with institutionalization).
- Specific recognition that violence, abuse and neglect of older persons is a human rights violation would drive greater awareness of the problem and the development and financial support of social services to monitor, prevent, respond to and remediate

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<sup>213</sup> [A. Byrnes, N. Georgantzi, B. Mitchell and I. Doron, Time for a UN Convention on the Rights of Older Persons \(Discussion Paper, August 2020\)](#) (noting that key topics to be addressed in such a convention or treaty would include equality and non-discrimination; autonomy; care, support and independent living; freedom from violence, abuse and neglect; health and social protection and social security).

violence and abuse and provide older persons with access to the information and support needed for them to combat neglect by building their own capacities for autonomous and independent living.

- Equal rights of older persons to the highest attainable standard of health would be recognized and older persons would no longer be subject to discrimination when seeking health services. Health services that respond to the specific needs of older persons would be freely available and older persons would not be denied access to health services based on their age.
- States would be required to establish and adequately support, through financial and human resources, comprehensive guaranteed social protection systems for older persons that ensure them an adequate standard of living, particularly in times of crisis.

The researchers added: “A UN convention on the rights of older persons would help us build a solid foundation from which effective national laws and behavior can emerge. It would provide specific answers that governments, the private sector and others need to make the right decisions about how to deliver services that respect our dignity in older age and build societies that are fair and just.”<sup>214</sup> In the policy briefing referred to above, *Foreign Policy* and AARP commented: “The risks to older adults, illuminated by Covid-19, make clear that the explicit international recognition of the human rights of older persons is still needed. Many countries lacked the legal protections to prevent discrimination, exclusion, marginalization, violence, and abuse prior to the pandemic, and these issues have only been exacerbated under the crisis.”<sup>215</sup>

AGE Platform Europe was among the many who argued that the systemic ageism exposed by the responses to the Covid-19 pandemic should be a catalyst for a sense of urgency to adopt a new convention or treaty on the human rights of older persons that would create a blueprint for change and a better entry point for participation and remediation and serve as an important step forward in mainstreaming older people’s rights in the UN human rights system.<sup>216</sup> Specific advantages of such a convention or treaty according to AGE would include the following:

- Ensuring that human rights violations against older people are treated with the same level of scrutiny, gravity or urgency as violations against women, children or persons with disabilities by establishing obligations to detect and address human rights violations against older persons and anchor ageing policies based on human rights.
- Filling the normative gaps in existing human rights treaties that offer little clarity on realization of older persons’ human rights by explicitly identifying standards and remedies for common rights violations experienced in old age such as prohibiting age discrimination in all spheres of life, addressing the digital gap and recognizing far-reaching rights to care and support.

<sup>214</sup> Id. at 18.

<sup>215</sup> [Human Rights & Older Persons: How COVID-19 is compounding vulnerabilities of older adults \(Foreign Policy and AARP, September 2020\)](#), 7.

<sup>216</sup> [Human rights are for all ages - Time of the EU to lead the rallying for a UN Convention | AGE Platform \(age-platform.eu\)](#)

- Strengthening the general enforceability of the human rights system by creating opportunities for individuals and civil society to hold states accountable for protecting the rights of older persons and provide remedies for violations of such rights.
- Involving older persons and all the individuals and organizations who advocate for older persons' rights in the decision making processes which affect their human rights.
- Addressing the relative invisibility and neglect of older persons within the existing human rights system by ensuring there will be a sustained focus on their specific needs.
- Resolving the problems associated with the inconsistent and dispersed approach to older persons' issues in the existing human rights framework and providing certainty on addressing the multiple disadvantages that can occur at the intersection of different forms of inequalities.

HelpAge International also argued in March 2021 that: “Discrimination and inequalities facing older people are certainly nothing new, but the COVID-19 pandemic has brought these issues to the fore like never before. This is why we urgently need a UN convention on the rights of older people and we need to see concrete action being taken right now.”<sup>217</sup> According to a spokesperson for HelpAge, a dedicated UN convention on the rights of older persons would “allow older people to live in dignity and with autonomy”, “affirm that older people have the right to care and support services so they can live autonomous and independent lives” and provide “better access to a range of care and support services in the community and in older people’s homes so that older people can continue to enjoy their right to choose where and with whom they live on an equal basis with others”. Other benefits of a convention or treaty cited by HelpAge included rights to adequate pensions and access to additional funding from international donors once the global community has affirmed by its actions that older people should be a priority group for international aid.

### *Roadmaps for a Convention*

If the barriers to negotiating and completing a new legally binding international instrument on the human rights of older persons can be overcome, the obvious question is what might be covered in such a convention or treaty. Certainly the UN Principles for Older Persons and the Madrid Plan are valuable sources for contents of an older persons' convention or treaty; however, there are two fully developed roadmaps that warrant serious consideration: the Convention on the Rights of Persons with Disabilities (“CRPD”), since “elderly people, as a group, share a common history of neglect under

<sup>217</sup> [UN must deliver convention on older people's rights as COVID-19 exposes systemic ageism \(HelpAge International\)](#) (noting also that “The UN Secretary General stated in a May 2020 policy document [The Impact of Covid-19 on Older Persons] that the lack of an international legal instrument, alongside inadequate national protection of rights, has resulted in inadequate responses to the pandemic.”). See also [Calls for UN convention on older people's rights amid pandemic ageism \(Devex\)](#).



international law with people with disabilities”<sup>218</sup>, and the Inter-American Convention on the Protection of the Human Rights of Older Persons.

### Convention on the Rights of Persons with Disabilities

The first binding international instrument addressing the needs of persons with disabilities worldwide, the CRPD was adopted in 2006 and went into force in 2008<sup>219</sup> and sooner thereafter Kanter praised it as “a blueprint for how an elderly-specific treaty could be developed and what issues it could address”.<sup>220</sup> Before the CRPD went into force, disability as a human right issue was highlighted in the World Programme of Action Concerning Disabled People (1982), the Convention on the Rights of the Child (1989) and in the Standard Rules on the Equalisation of Opportunities for People with Disabilities (1993), and more than 40 countries adopted disability discrimination legislation during the 1990s.<sup>221</sup> In addition, disability was widely recognized as a “human rights issue” for the following reasons: people with disabilities experience inequalities (e.g., when they are denied equal access to health care, employment, education, or political participation because of their disability); people with disabilities are subject to violations of dignity (e.g., when they are subjected to violence, abuse, prejudice, or disrespect because of their disability); and some people with disability are denied autonomy (e.g., when they are subjected to involuntary sterilization, or when they are confined in institutions against their will, or when they are regarded as legally incompetent because of their disability).<sup>222</sup>

According to Kanter, the goal of the CRPD was to promote and ensure the full and effective participation and inclusion of persons with disabilities in society through the adaptation of “education, employment, health care, social service systems, transportation, technology, and society generally ... to ensure that they are all accessible and appropriate

<sup>218</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527, 539.](#)

<sup>219</sup> [A/RES/61/106](#)

<sup>220</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527, 571-572](#) (also noting that the CRPD was a good model for an older persons’ convention or treaty because it illustrated the value of involving organizations of people with disabilities in the drafting process and rejected the “medical or social welfare model of disability that focuses on diagnosis and inability” in favor of “[a] human rights model that focuses on capability and inclusion and ways to prevent and remove the attitudinal and structural barriers” faced by persons with disabilities as they seek to become members of their communities).

<sup>221</sup> [World Report on Disability \(Geneva: World Health Organization, 2011\)](#), 9 (citing G. Quinn et al. The current use and future potential of United Nations human rights instruments in the context of disability (New York and Geneva: United Nations, 2002)).

<sup>222</sup> *Id.* (citing G. Quinn and T. Degener, “A survey of international, comparative and regional disability law reform” in M. Breslin and S. Yee (Editors), *Disability rights law and policy - international and national perspectives* (Ardsey: Transnational, 2002)).

for people with disabilities, of all ages”.<sup>223</sup> In 2006 the UN High Commissioner for Human Rights at that time had stated: “[T]he existing human rights system was meant to promote and protect the rights of persons with disabilities. ... [But] the existing standards and mechanisms have in fact, failed to provide adequate protection in the specific cases of persons with disabilities. It is clearly time for the United Nations to remedy this shortcoming.”<sup>224</sup> Interestingly, she also noted that “attitudes, rather than resource constraints, [often] create the strongest barriers to the enjoyment of rights by persons with disabilities”.<sup>225</sup> Each of these points are equally applicable to the situation of older persons, a group that needs more protections than what are available to them as a matter of soft law and an attitudinal shift toward a rights-based approach to ensuring the universal rights in the UN Principles for Older Persons, namely “independence”, “participation”, “care”, “self-fulfillment” and “dignity”.<sup>226</sup> In the words of Kofi Annan, the UN Secretary-General when the CRPD was adopted: “While [the CRPD] focuses on the rights and development of people with disabilities, it also speaks about our societies as a whole—and about the need to enable every person to contribute to the best of their abilities and potential.”<sup>227</sup>

Article 5 of the CRPD calls on States to prohibit all discrimination on the basis of disability, guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds and take all appropriate steps to ensure that reasonable accommodation is provided.<sup>228</sup> Article 2 of the CRPD defines “discrimination on the basis of disability” to mean “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” and notes that this “includes all forms of discrimination, including denial of reasonable accommodation”.<sup>229</sup> The CRPD does not include a specific definition of disability, instead the Preamble notes 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”.

<sup>223</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527, 571-572.](#)

<sup>224</sup> [Louise Arbour, High Commissioner for Human Rights, United Nations, Statement Before the General Assembly Ad Hoc Committee \(Jan. 27, 2006\).](#)

<sup>225</sup> *Id.*

<sup>226</sup> For further discussion, see [B. Lewis, K. Purser and K. Mackie, “A Human Rights-Based Approach to Elder Law” in \*The Human Rights of Older Persons\* \(Singapore: Springer, 2020\).](#)

<sup>227</sup> [Speech on the Adoption of Landmark Convention on Rights of Persons with Disabilities \(December 13, 2006\).](#)

<sup>228</sup> [A/RES/61/106](#)

<sup>229</sup> Article 2 of the CRPD defines “reasonable accommodation” to mean “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

Kanter emphasized that one of the most significant aspects of the CRPD, which would be directly relevant to framing a convention or treaty for older persons, is the decision of the drafters to not define “disability”, thus shifting the underlying paradigm from a traditional “medical” model of disability to a human rights-based approach<sup>230</sup>:

“The drafters of this Convention were clear that disability should be seen as the result of the interaction between a person and his or her environment. Disability is not something that resides in the individual as the result of some impairment. Instead, disability is an evolving concept. This approach to disability marks a shift in thinking about disability from a social welfare concern, to a human rights issue, which acknowledges that societal barriers and prejudices are themselves disabling. The Convention, therefore, marks a “paradigm shift” in attitudes and approaches to persons with disabilities. Unlike the medical model that views disability as a problem of the person, the Convention adopts the human rights model which sees the disability in society, not the person, and views people with disabilities as rights holders and members of our respective societies who are often more disabled by the physical and attitudinal barriers societies erect to exclude and stigmatize them, than by their own physical or mental condition. For example, a person in a wheelchair might have difficulty voting not because of her condition or a lack of opinions about the candidates, but because the polling place, the polling machines or even the bus that would take her to the polling place are not accessible.”

The WHO argued that the CRPD’s definition of disability as “an interaction” means that it is not an attribute of the person, but rather a function of barriers that hinder persons with disabilities in their day-to-day lives that can be addressed and resolved in a manner that promotes progress toward improvement of their social participation.<sup>231</sup> The WHO called for actions to be taken in order to change disabled persons’ environment to improve health conditions, prevent impairments and improve outcomes for persons with disabilities and noted that changes could be brought about by “legislation, policy changes, capacity building, or technological developments leading to, for instance,

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<sup>230</sup> [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, \*Georgia State University Law Review\*, 25 \(2009\), 527, 549-550 \(footnote 102\).](#) The drafters of the CRPD could not reach agreement on whether a specific definition of disability should be included and thus none was provided; however, Article 1 of the CRPD does explain that “[p]ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. According to Kanter, proponents of not including a definition argued that “any definition would necessarily include some people and not others, and that over time, the definition may change in a way that would exclude people who may not now be considered as members of the group of people with disabilities” and that not including a definition recognized that “a person may be considered as having a disability in one society or setting, but not in another, depending on the role that the person is assumed to take in his or her community and the barriers that disable the individual from participating in a given society”. *Id.* at 551. See also [K. Kazou, “Analysing the Definition of Disability in the UN Convention on the Rights of Persons with Disabilities: is it really based on a 'Social Model' approach?”, \*International Journal of Mental Health and Capacity Law\*, 23 \(2017\), 25.](#)

<sup>231</sup> [World Report on Disability \(Geneva: World Health Organization, 2011\), 4.](#)

accessible design of the built environment and transport; signage to benefit people with sensory impairments; more accessible health, rehabilitation, education, and support services; more opportunities for work and employment for persons with disabilities”.<sup>232</sup>

The CRPD is obviously focused on the human rights of persons with disabilities, regardless of their age, and does not single out older people for special protections (although age is mentioned specifically in several places in the CRPD); however, a number of the articles acknowledge and address issues that are relevant to older persons, with or without disabilities:

- Article 3 sets forth various fundamental principles for the CRPD which are equally applicable to older persons including respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; and accessibility.
- Article 8 addresses stereotyping, a challenge for both persons with disabilities and older persons, by calling for adoption of immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; and promote awareness of the capabilities and contributions of persons with disabilities.<sup>233</sup>
- Article 9 concerns accessibility and ensuring that persons with disabilities are able to live independently and participate fully on an equal basis with others in all aspects of life, which means that States must take appropriate measures to identify and eliminate obstacles and barriers to accessibility for persons with disabilities to the physical environment (e.g., buildings and road); to transportation; to information and communications, including information and communications technologies and systems; and to other facilities (e.g., schools, housing, medical facilities and workplace) and services (including electronic and emergency services) open or provided to the public, both in urban and in rural areas.
- Article 12 includes the rights of disabled persons to equal recognition before the law and enjoyment of legal capacity on an equal basis with others in all aspects of life and calls on States to provide persons with disabilities with the necessary support to freely exercise their legal capacity in accordance with their own will and preferences and

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<sup>232</sup> Id.

<sup>233</sup> Article 8(2) of the CRPD describes various measures that could be taken including (a) initiating and maintaining effective public awareness campaigns designed to nurture receptiveness to the rights of persons with disabilities; promote positive perceptions and greater social awareness towards persons with disabilities; and promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labor market; (b) fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities; and (c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the CRPD; and (d) promoting awareness-training programs regarding persons with disabilities and the rights of persons with disabilities

ensure that appropriate and effective safeguards are in place to prevent abuse in accordance with international human rights law.<sup>234</sup>

- Article 13(1) includes one of the specific references to age in the CRPD and calls on States to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.<sup>235</sup>
- Article 16(2) also specifically refers to age in creating obligations on States to provide appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers to prevent exploitation, violence and abuse, including the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse and provision of protective, recovery and rehabilitation services that are effectively monitored by independent authorities.
- Article 19 addresses the rights of persons with disabilities to live independently in their communities, with choices equal to others and the ability to be fully included participants in the community, by requiring that States ensure that (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; (b) persons with disabilities have 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 from the community; and (c) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

<sup>234</sup> Article 12(5) of the CRPD provides that “States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property”. Notably in the context of the rights of older persons, Article 12 of the CRPD effectively abolishes the concept of “guardianship”, which is well known in the US and anticipates that guardians will make decisions as a substitute for individuals, in favor of “supportive decision-making” which focuses on supporting individuals to overcome limits in their “capacity” in order to make their own decisions and choices about their own lives. While well intended, guardianship may put disabled or older persons in paternalistic legal relationships with guardians who ignore their wishes or subject them to abuse, a risk that may cause those needing assistance to avoid asking for help. [A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, Georgia State University Law Review, 25 \(2009\), 527, 560, 563.](#) See also [COVID-19 and Older Persons: A Defining Moment for an Informed, Inclusive and Targeted Response \(UN Department of Economic and Social Affairs, May 2020\)](#), 2 (noting that where older persons require representatives to assist them in making decisions about medical treatment, these should be freely chosen by the older person and a model of supported decision-making should be put in place to ensure that the patient is empowered to make choices with free, prior and informed consent and without undue influence or pressure).

<sup>235</sup> Article 13(2) of the CRPD requires that States promote appropriate training for those working in the field of administration of justice, including police and prison staff, in order to help to ensure effective access to justice for persons with disabilities.



- Article 20 addresses another important aspect of independence by requiring States to take effective measures to ensure personal mobility by (a) facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost; (b) facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost; (c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities; and (d) encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.
- Article 25(b) also specifically mentions older persons when calling on States to promote disabled persons' rights to health services by providing them with services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.
- Article 25(d) raises and addresses an issue that is equally applicable to older persons, regardless of whether they also have disabilities, by requiring health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent.<sup>236</sup>
- Article 26 requires that States take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, with particular attention to organizing, strengthening and extending habilitation and rehabilitation services and programs in the areas of health, employment, education and social services.
- Article 27(1) requires that States recognize the right of persons with disabilities to work, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities, and that States take appropriate steps to safeguard and promote the realization of the right to work for persons with disabilities.
- Article 28(2)(b) explicitly mentions older persons in calling on States to recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability and take appropriate steps to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection and poverty reduction programs.

States ratifying the CRPD have a range of general obligations including undertakings to adopt legislation and other appropriate administrative measures where needed; modify or repeal laws, customs, or practices that discriminate directly or indirectly; include disability in all relevant policies and programs; refrain from any act or practice inconsistent with the CRPD; and take all appropriate measures to eliminate

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<sup>236</sup> Article 25(d) of the CRPD calls for training regarding the human rights, dignity, autonomy and needs of persons with disabilities and promulgation of specific ethical standards for public and private health care for persons with disabilities.

discrimination against persons with disabilities by any person, organization, or private enterprise.<sup>237</sup> States are also expected to consult with people with disabilities and their representative organizations when developing laws, policies, and programs to implement the CRPD. Beyond States, it is also expected under the CRPD that public and private bodies will make “reasonable accommodation” to the situation of people with disabilities.<sup>238</sup>

Kanter acknowledged that there are laws and regulations in the US and other countries that focus on *access* to health care or housing; however, they do not include a right to health care, housing or shelter and she argued that the CRPD bridges that gap to create a framework that acknowledges basic rights and imposes duties on states to support persons with disabilities in realizing those rights, a framework that can easily and seamlessly be applied to older persons requiring similar support.<sup>239</sup> The need is clear and permeates day-to-day activities of older persons: “For people who are elderly and may have physical or mental impairments, the right to health means nothing if the individual does not have the means to purchase necessary health care, or if the person is elderly and has limited mobility and the doctor is located up a flight of stairs in an inaccessible office. The right to political participation means nothing to an elderly person with limited vision who wishes to vote but is unable to see the ballot. ... And, the right to life means nothing if an elderly individual is considered unable to make decisions about his or her own life through the use of overbroad guardianship laws.”<sup>240</sup>

#### Inter-American Convention on the Protection of the Human Rights of Older Persons

The world’s first international human rights instrument of a general nature, the American Declaration of the Rights and Duties of Man, also known as the Bogota Declaration, was adopted by the Member States of the Organization of American States (“OAS”) on May 2, 1948, seven months before the UDHR.<sup>241</sup> In 2015, the Member States of the OAS took a historic step forward by approving the Inter-American Convention on the Protection of the Human Rights of Older Persons in order to promote, protect, and ensure the recognition and full enjoyment and exercise, under conditions of equality, of all human rights and fundamental freedoms of the elderly, in order to contribute to their full inclusion, integration, and participation in society.<sup>242</sup> The Convention, among other rights, establishes the right to care for the elderly, the need to incorporate and give priority to the issue of aging in public policies, the importance of facilitating the formulation and compliance with laws and programs for the prevention of abuse, abandonment, neglect, mistreatment, and violence against the elderly, and the need to have national mechanisms that protect their human rights and fundamental freedoms.

<sup>237</sup> World Report on Disability (Geneva: World Health Organization, 2011), 9.

<sup>238</sup> Id.

<sup>239</sup> A. Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, *Georgia State University Law Review*, 25 (2009), 527, 572.

<sup>240</sup> Id. at 572-573.

<sup>241</sup> <http://www.oas.org/en/iachr/mandate/Basics/declaration.asp>

<sup>242</sup> [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-70\\_human\\_rights\\_older\\_persons.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp)

The Convention is the first regional instrument that specifically protects the rights of older people. The Convention entered into force on January 11, 2017, and there are seven States parties to the Convention.<sup>243</sup>

The Convention begins by focusing on equality and non-discrimination as fundamental rights for older persons, and Article 2 of the Convention defines “[a]ge discrimination in old age” as “[a]ny distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life.” Article 3 of the Convention calls for recognition of the dignity, independence, and autonomy of older persons as well as their physical, economic, and social security, and looks to States, with the participation of the family and community, to care for and assist older persons to ensure the “active, full, and productive integration of older persons into society”.

Article 4 of the Convention lists several duties of States parties:

- “State Parties shall take measures to prevent, punish and eradicate practices such as isolation, abandonment, prolonged physical restraints, overcrowding, denial of nutrition, and inadequate medical treatments, among others.
- State Parties shall take steps so that public and private institutions offer non-discriminatory access to comprehensive care to older persons, including palliative care, avoiding isolation, properly managing problems related to fear of death among the terminally ill, and avoiding pain and unnecessary suffering.
- Older persons have the undeniable right to express their free and informed consent in health settings.
- State Parties shall design measures so that older persons can enjoy their right to a comprehensive care system that will provide the protection and promotion of health, coverage of social services, nutrition and food security, among other issues.
- Older persons have the right to enjoy a life without any kind of violence and abuse.”

The purpose of the Convention is to recognize, promote, and protect the rights of older persons, generally defined in the Convention as people aged 60 or older, and promote “active and healthy aging”, defined in the Convention as “[t]he process of optimizing opportunities for physical, mental, and social well-being, participation in social, economic, cultural, spiritual, and civic affairs, and protection, security, and care in order to extend healthy life expectancy and quality of life for all people as they age, as well as to allow them to remain active contributors to their families, peers, communities, and nations”.<sup>244</sup> The Convention draws on existing principles established in the various non-binding regional instruments mentioned above as well as in international initiatives such as the Madrid Plan, to enumerate 26 protected rights in its Articles 5 through 31 relating

<sup>243</sup> <https://www.oas.org/es/CIDH/R/template.asp?File=/en/iachr/r/pm/bdocuments.asp>

<sup>244</sup> The Convention defines “ageing” as “[a] gradual process that develops over the course of life and entails biological, physiological, psychosocial, and functional changes with varying consequences, which are associated with permanent and dynamic interactions between the individual and their environment”.

to the right of older persons to safety and a life free of violence of any kind; right to receive long-term care; right to work; right to health; right to education; right to housing; and the right to accessibility and personal mobility.<sup>245</sup> The Convention also includes two processes for monitoring and assessing the implementation of the commitments under the Convention including a periodic reporting process and the right of individuals, groups of individuals and non-governmental organizations to submit complaints of alleged violations of the Convention to the Inter-American Commission on Human Rights. The Convention also expressly authorizes States parties to accept the Inter-American Court of Human Rights' jurisdiction to hear complaints against it involving the Convention.<sup>246</sup>

### **The Work of the UN Open-Ended Working Group on Aging**

The focal point of the debate and work surrounding a new convention or treaty on the human rights of older persons is the UN Open-ended Working Group on Aging, which was formed in 2010 to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures such as a comprehensive international treaty to promote and protect the rights and dignity of older persons.<sup>247</sup> The Working Group, which is open to all Member States and observers of the UN, has met annually since it was formed and at each session has considered reports and other presentations on a wide array of issues relating to the human rights of older persons including autonomy and independence, long-term and palliative care, social protection and security, education and life-long learning, capacity-building, right to work and access to justice.

In August 2012 the OHCHR prepared an Analytical Outcome Paper (the “2012 Analytical Study”) for the third working session of the Open-ended Working Group on Ageing in order to assist the Working Group in carrying out its mandate by providing an analysis of the existing international human rights normative framework as it related to the protection of the human rights of older persons.<sup>248</sup> The 2012 Analytical Study confirmed that there were few explicit references to discrimination on the ground of older age in international human rights instruments, although it was true that older persons were theoretically covered by general guarantees of equality and of nondiscrimination on the ground of “other status”, and noted that “the absence of such explicit guarantees in the United Nations human rights treaties appeared to contribute to the low level of attention given to age discrimination when compared to discrimination on grounds that were explicitly mentioned in the treaties”.<sup>249</sup>

<sup>245</sup> <https://ijrcenter.org/2016/12/27/first-older-persons-rights-convention-enters-into-force-in-americas/>

<sup>246</sup> Id. For information on signatories and ratifications of the Convention, see [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-70\\_human\\_rights\\_older\\_persons\\_signatories.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp)

<sup>247</sup> <https://social.un.org/ageing-working-group/>

<sup>248</sup> OHCHR, Normative standards in international human rights law in relation to older persons, Analytical Outcome Paper (August 2012).

<sup>249</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 (March 2021),

Notably, the 2012 Analytical Study called out concerns that some experiences of older persons “were all but completely overlooked by the human rights system” and that there were “emerging claims that there are specific human rights features particular to [the] situation [of older persons], which are not adequately addressed by relevant human rights instruments” such as rights to long-term care and support and palliative care.<sup>250</sup> Among the main conclusions of the 2012 Analytical Study was that there was a “demonstrable inadequacy of protection arising from normative gaps, as well as fragmentation and a lack of coherence and specificity of standards as they relate to older persons”.<sup>251</sup>

In a resolution adopted on December 12, 2012, the UN General Assembly called on the Working Group to consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons taking into account, among other things, the Madrid Plan, and present to the General Assembly, at the earliest possible date, a proposal containing, inter alia, the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons, which are not currently addressed sufficiently by existing mechanisms and therefore require further international protection.<sup>252</sup>

At its tenth working session in 2019 the Open-ended Working Group on Ageing requested that the OHCHR provide an update to the 2012 Analytical Study, which was presented in March 2021 (the “2021 Updated Study”) and took into account not only the insights that had been gained by the Working Group since the 2012 Analytical Study but also the major impact that the response to the Covid-19 pandemic had on older persons’ enjoyment of their human rights.<sup>253</sup> In the summary to the 2021 Updated Study, the OHCHR summed up its conclusions as follows<sup>254</sup>:

“The findings of this update accord with the conclusions of the 2012 Analytical Outcome Paper. Since the preparation of that study, there have been significant normative developments relating to the human rights of older persons at the regional level. However, at the international level, the existing human rights framework continues to provide fragmented and inconsistent coverage of the human rights of older persons in law and practice, and the engagement of international human rights mechanisms with the human rights of older persons has not been systematic, coherent or sustained.”

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Paragraph 2 (citing [OHCHR, Normative standards in international human rights law in relation to older persons, Analytical Outcome Paper \(August 2012\)](#), 3-4).

<sup>250</sup> [OHCHR, Normative standards in international human rights law in relation to older persons, Analytical Outcome Paper \(August 2012\)](#), 4.

<sup>251</sup> *Id.* at 3.

<sup>252</sup> [A/RES/67/139](#)

<sup>253</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 \(March 2021\)](#).

<sup>254</sup> *Id.* at 1.



The OHCHR noted that there has not appeared to have been “any significant, sustained increase in engagement by the [international human rights] system as a whole with the human rights of older persons since the Open-ended Working Group commenced its work nearly a decade ago” and that “[t]he COVID-19 pandemic and response to it have highlighted the existing failures to adequately protect the human rights of older persons and underlined the urgency of moving with expedition to improve the international human rights framework”.<sup>255</sup> Expressing a strong view as to the next steps forward, the OHCHR concluded that “adoption of ... [a dedicated normative instrument on the human rights of older persons] ... would be an effective way to bring about major changes in how the human rights of older persons are understood and protected, and thus contribute to changes in law and practice at the national level required to ensure older persons fully enjoy their human rights”.<sup>256</sup>

Activists expressed disappointment with the level of engagement by Member States during the eleventh working session of the Working Group that took place at the end of March 2021, noting that while 146 Member States had committed to promoting and respecting the rights of older persons in early 2020 against the background of the impact of grave violations of their human rights during the Covid-19 pandemic only eight of those States took part in the discussion of the impact of Covid-19 during the Session and only two States contributed to a discussion on how the human rights to social protection and education would be applicable in older age. It has been noted that while the UN Secretary General has called for acceleration of progress toward an international instrument on the human rights of older persons, and the interest and participation of NGOs in the activities of the Working Group has continued to expand, the “lack of engagement by states fails older people everywhere today and in future generations” and civil society organizations are losing patience with inaction by States that they believe has become “inexcusable”.<sup>257</sup>

Many of the participants in the working session believed that the work that had already been performed by the Working Group was a sufficient foundation for starting the drafting process, and there were calls for setting up a process to continue work between the formal Sessions of the Working Group and bringing together a group of human rights experts to prepare a draft with input from civil society, national human

<sup>255</sup> Id. at Paragraph 7. The 2021 Updated Study described the thematic issues that had been considered up to that time by the Open-Ended Working Group on Ageing including equality and non-discrimination; autonomy and independence; violence, neglect, exploitation and abuse; the right to long-term care and support; right to palliative care; social protection and social security, including social protection floors; and education, training, life-long learning and capacity building. At its twelfth working session in 2022, the Working Group focused its attention on [“right to work and access to the labor market”](#), [“access to justice”](#), [“contribution of older persons to sustainable development”](#) and [“economic security”](#).

<sup>256</sup> Id. at 1. In its Summary of Conclusions in the 2021 Updated Study the OHCHR said: “The silences, neglect and relative invisibility of human rights issues of central concern to older persons are so widespread and systemic in the international human rights system that it is clear that fundamental change is required. Simply exhorting existing mechanisms to do more and to include the perspectives of older persons in the execution of their mandates is not enough; a new dedicated normative instrument is needed to comprehensively remedy those deficiencies.” Id. at 5.

<sup>257</sup> [States continue to fail older people at UN \(HelpAge International\), April 7, 2021.](#)

rights institutions, the Independent Expert on the Rights of Older People and the Office of High Commissioner for Human Rights; however, the attending States were not able to achieve a formal consensus on this approach and, in fact, a majority did not even comment.<sup>258</sup>

Following the release of the 2021 Updated Study, on October 7, 2021, the Human Rights Council adopted its resolution 48/3 relating to the human rights of older persons.<sup>259</sup> The resolution began with certain fundamental findings by the Council including acknowledgement of the essential contribution that older persons make to the functioning of societies and to the achievement of the 2030 Agenda for Sustainable Development, recognition of the numerous particular challenges that older persons faced in the enjoyment of their human rights and concern about the disproportionate impact of the Covid-19 pandemic on older persons that exacerbated pre-existing inequalities. The Council called on all States to prohibit all forms of discrimination against older persons and to adopt and implement non-discriminatory policies, national strategies, action plans, legislation and regulations to promote and ensure the full realization of all human rights and fundamental freedoms and to take measures to combat ageism and eliminate age discrimination in order to protect the human rights of older persons across a broad array of situations and circumstances.<sup>260</sup> The Council recommended that States parties to existing international human rights instruments address, where appropriate, the situation of older persons more explicitly in their reports, and that States and all other stakeholders work together to combat ageism and eliminate age discrimination in all its forms and adopt a human-rights based approach in all programs, campaigns and activities relating to ageing and older persons.

The Council requested the OHCHR to prepare a report in consultation with States, regional mechanisms, treaty bodies, national human rights institutions, relevant United Nations agencies and civil society organizations on normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons and submit the report to the forty-ninth session of the Council.<sup>261</sup> In addition, the Council called on the 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 regarding older persons that would be submitted to the

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<sup>258</sup> Only 30 Member States submitted basic information in response to questions relating to the existing legal and policy frameworks within their borders relating to access to justice and right to work and the US was not among the respondents. See [Eleventh Session of the United Nations Open-ended Working Group on strengthening the protection of the human rights of older persons—Submissions by Member States](#).

<sup>259</sup> [Human Rights Council Resolution 48/3](#).

<sup>260</sup> In paragraph 4 of the resolution the Council noted that “ageism can be associated with stereotypes, prejudice and/or discriminatory actions or practices, including hate speech, against older persons based on their chronological age or on a perception that the person is “old”, and that ageism can be implicit or explicit and be expressed at different levels”.

<sup>261</sup> *Id.* at Paragraph 13.

fifty-first session of the Council.<sup>262</sup> The OHCHR issued the requested report on January 28, 2022, and summed up its conclusions as follows<sup>263</sup>:

“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.

...

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.

...

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.”

The OHCHR reiterated the need for better of implementation of existing norms and standards; however, the report also made it clear that it was time for “accelerated development of a new normative instrument” that would put the spotlight on the specificity of older persons for the enjoyment of their rights and in addressing violations, shape policy frameworks and indicators to measure progress, provide a rallying point for stakeholders and advocacy and facilitate awareness of and sensibility to the intersectionality of rights and violations.<sup>264</sup> Specifically, the OHCHR announced that for older persons to fully enjoy their human rights and fundamental freedoms there must be “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”.<sup>265</sup>

The OHCHR called for ongoing multi-stakeholder consultations, with active and meaningful participations and contribution by older persons themselves, and a review of

<sup>262</sup> Id. at Paragraph 14.

<sup>263</sup> [A/HRC/49/70: Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons – Report of the UN High Commissioner for Human Rights \(January 28, 2022\)](#), Paragraphs 54-56.

<sup>264</sup> Id. at Paragraph 58.

<sup>265</sup> Id. at Paragraph 59.

existing international human rights mechanisms to review their current practices to better integrate the human right of older persons into their work.<sup>266</sup> The report, along with the work performed to complete the 2021 Updated Study, also provide a robust list of the particular challenges to older persons that have been identified and must be incorporated into a new normative framework including the following from resolution 48/3: “prevention of and protection against violence, abuse and neglect, social protection, food and housing, the right to work and access to the labor market, equality and nondiscrimination, access to justice, new technologies, education, training, health support, long-term and palliative care, lifelong learning, participation, accessibility and unpaid care work”.<sup>267</sup>

## Conclusion

Human rights law has evolved to include civil and political “freedoms”, equality and socio-economic rights and collective rights to a healthy environment, self-determination and development and has become embedded in international and regional frameworks based on actions that began in the 1800s and early 1900s and continued largely through the activities of the UN to become a comprehensive library of treaties and domestic laws defining human rights, a global community of international, regional, and national bodies to monitor and interpret human rights and an expanding array of tools to enforce human rights and respond to violations of those rights by states and other actors. The UN has identified aging as being among the most important global issues, predicting that aging will become one of the most significant social transformations of the 21<sup>st</sup> Century, but the OHCHR has conceded that age-based discrimination has not been explicitly defined in human rights treaties and that with certain limited exceptions references to age are scarce in any of the principal international human rights treaties.

Since 1948 there has been almost 20 declarations, principles, resolutions, plans of action and proclamations issued by the UN and its instrumentalities relating to aging (including the sweeping and bold agenda for handling the issues associated with aging in the 21<sup>st</sup> Century set out in the Madrid Plan of Action on Aging), and it is conceded that, in theory, most of the provisions in UN treaties and other instruments relating to human rights are intended to be universal and thus applicable to older persons as well as all other human beings. Serious and formal discussions of the feasibility and content of a separate international convention or treaty on the human rights of older persons has been going on for several decades and during that time we have seen the adoption of a universal

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<sup>266</sup> Id. at Paragraph 60.

<sup>267</sup> [Human Rights Council Resolution 48/3](#). The 2021 Updated Study also discussed other important issues that the OHCHR believed had been neglected in the current international normative framework including data gaps and deficiencies; robotics, artificial intelligence and technology; refugees, asylum-seekers and IDPs; disaster and emergency situations; and business and human rights. Soon after the 2021 Updated Study was released, the OHCHR released an [analytical study on the promotion and protection of the rights of older persons in the context of climate change](#). For further discussion, see [A. Gutterman, Climate Change and Older Persons \(Oakland CA: Older Persons’ Rights Project, 2022\)](#). Other thematic issues identified during the work performed by the Open-Ended Working Group on Ageing and not already mentioned include autonomy and independence; the contribution of older persons to sustainable development and economic security.

instrument covering the rights of persons with disabilities and a major regional convention on the rights of older persons, both of which can serve as a roadmap for the older persons' project. However, the international community has failed to create a comprehensive legal, policy and institutional framework for the protection of the human rights of older persons and ensuring that they have opportunities to fully participate in economic, social, cultural and political life with dignity and without discrimination.

The voices of NGOs and activists have grown louder regarding the need for rapid movement toward a convention or treaty, most States have failed to engage and progress under the auspices of the UN Open-ended Working Group on Aging has been slow. Many hope that lessons learned from the response to the Covid-19 pandemic, which had a crushing toll on older persons around the world, will ignite attention of States to developing and implementing national plans on aging to address a range of challenges including income security, access to age-appropriate health-care services, access to labor markets and social protection, protection from abuse and violence and age discrimination. The pandemic, arguably the biggest international crisis in generations, will hopefully serve as a catalyst for transformational changes in the global human rights framework in order to respond to gaps in protections that were exposed by responses to the emergency including instances of inequality and discrimination against not only older persons but also other vulnerable groups including women, minorities and persons with disabilities.<sup>268</sup>

What is needed is a strong and clear commitment to action from the leaders of the world's largest countries based on acknowledging that human rights of older persons can no longer be an afterthought and must be given the same attention and recognition as has been afforded to members of other vulnerable groups. In other words, the time for "mainstreaming older people's rights in the UN system", long overdue, has finally arrived.<sup>269</sup> While policymakers are beginning to address some of the glaring problems that emerged during the pandemic, such as shortcoming in long-term care, they must act from a human rights perspective and having a universal instrument written specifically with the needs of older persons in mind will make the process easier and ensure that the intended beneficiaries of those actions will be allowed to participate in creating their own better futures.

### Additional Resources

- [Byrnes, N. Georgantzi, B. Mitchell and I. Doron, Time for a UN Convention on the Rights of Older Persons \(Discussion Paper, August 2020\)](#)
- [M. Fredvang and S. Biggs, The rights of older persons: Protection and gaps under human rights law \(Melbourne: Centre for Public Policy and the Brotherhood of St Laurence Social Policy Working Paper No. 16, August 2012\)](#)

<sup>268</sup> [Pandemic recovery presents historic opportunity to ensure human rights for all, UN News \(February 24, 2021\).](#)

<sup>269</sup> [The EU Must Lead the Rallying for a UN Convention \(AGE Platform Europe\).](#)



- [Kanter, “The United Nations Convention on the Rights of Persons with Disabilities and its implications for the rights of elderly people under international law”, Georgia State University Law Review, 25 \(2009\)](#)
- [J. Miller, “International Human Rights and the Elderly”, Marquette Elder’s Advisor, 11\(2\) \(Article 6\) \(2010\), 343](#)
- [D. Rodríguez-Pinzón and C. Martin. "The International Human Rights Status of Elderly Persons", American University International Law Review, 18 \(4\) \(2003\)](#)
- [F. Viljoen, “International Human Rights Law: A Short History”, UN Chronicle, Vol. XLVI No. 1 & 2 2009 \(January 2009\)](#)
- [A/HRC/49/70: Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons – Report of the UN High Commissioner for Human Rights \(January 28, 2022\)](#)
- [Active Ageing: A Policy Framework \(Geneva: World Health Organization, 2002\)](#)
- [Ageing, Older Persons and the 2030 Agenda for Sustainable Development \(New York: United Nations Development Programme, July 2017\)](#)
- [Human Rights of Older Persons and Non-Discrimination \(Santiago, Chile: Center of Old Age and Aging Studies, Pontificia Universidad Catolica de Chile and Office of the UN High Commissioner for Human Rights, 2017\)](#)
- [OHCHR, Fact Sheet No 2: The International Bill of Rights \(Rev 1\)](#)
- [OHCHR, Fact Sheet No 30: The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies](#)
- [OHCHR, Fact Sheet No 16: The Committee on Economic, Social and Cultural Rights \(Rev 1\)](#)
- [Report of the World Assembly on Aging, Vienna, 26 July-6 August 1982, UN Sales No. E.82.1.16 \(1982\)](#)
- [OHCHR, Normative standards in international human rights law in relation to older persons, Analytical Outcome Paper \(August 2012\)](#)
- [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 \(March 2021\)](#)
- [Strengthening Older People’s Rights: Towards a UN Convention](#)
- [The Foundation of International Human Rights Law](#)
- [The Inter-American Convention on Protecting the Human Rights of Older Persons \(A-70\)](#)
- [UN Committee for Economic, Social and Cultural Rights homepage](#)
- [UN Committee on Economic, Social and Cultural Rights: The Economic, Social, and Cultural Rights of Older Persons: General Comment 6, UN Doc. E/C.12/1995/16/Rev. 1 \(August 12, 1995\)](#)
- [UN Commission for Social Development, Economic and Social Council, Further implementation of the Madrid International Plan of Action on Aging, 2002: Report of the Secretary-General, E/CN.5/2014/4 \(December 16, 2013\)](#)
- [What Are Human Rights? \(International Justice Resource Center\)](#)
- [Why it’s time for a convention on the rights of older people \(HelpAge International, 2009\)](#)

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### About the Author

This Work was written by Alan S. Gutterman, whose prolific output of practical guidance and tools for legal and financial professionals, managers, entrepreneurs and investors has made him one of the best-selling individual authors in the global legal publishing marketplace. His cornerstone work, *Business Transactions Solution*, is an online-only product available and featured on Thomson Reuters' Westlaw, the world's largest legal content platform, which includes almost 200 book-length modules covering the entire lifecycle of a business. Alan has also authored or edited over 100 books on sustainable entrepreneurship, leadership and management, business law and transactions, international law and business and technology management for a number of publishers including Thomson Reuters, Practical Law, Kluwer, Aspatore, Oxford, Quorum, ABA Press, Aspen, Sweet & Maxwell, Euromoney, Business Expert Press, Harvard Business Publishing, CCH and BNA. Alan has extensive experience as a partner and senior counsel with internationally recognized law firms counseling small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property, and has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. He has been an adjunct faculty member at several colleges and universities, including Berkeley Law, Golden Gate University, Hastings College of Law, Santa Clara University and the University of San Francisco, teaching classes on corporate finance, venture capital, corporate governance, Japanese business law and law and economic development. He has also launched and oversees projects relating to sustainable entrepreneurship and the civil and human rights of older persons. He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge. For more information about Alan and his activities, please contact him directly at [alanguutterman@gmail.com](mailto:alanguutterman@gmail.com), follow him on [LinkedIn](#), subscribe to his [newsletter](#) and visit his website at [alanguutterman.com](http://alanguutterman.com). Many of Alan's research papers and other publications are also available through [SSRN](#) and [Google Scholar](#).

Alan launched and leads the [Older Persons' Rights Project](#), which is a California nonprofit public benefit corporation with tax exempt status under section 501(c)(3) of the Internal Revenue Code dedicated to advancing awareness of the challenges and opportunities associated with increased longevity; combatting and eliminating prejudice against older persons and age discrimination in all its forms; defending the human and civil rights of older persons secured by law, with particular attention to the rights of members of vulnerable groups; and promoting and advancing the interests of older persons in society as a whole through education and efforts to enhance intergenerational solidarity. The Project engages in high-quality, independent research with the goal of providing innovative, practical recommendations for policymakers, businesses and civil society on addressing ageism and improving the lives of older persons.

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