

A new convention on the rights of older people: a concrete proposal

HelpAge International believes that a single instrument, a new international convention on the rights of older people is the most effective way to ensure that all people, now and in the future, enjoy their human rights in their older age on an equal basis with others.

Introduction

A new convention would be transformative. It would establish norms and standards promoting dignity, equality, autonomy and self-fulfilment in older age to replace the deeply stigmatising and dehumanising ageist attitudes and behaviour that currently dominate the way we at every level in society respond to older age and older people. It would improve the promotion and protection of human rights in older age in law and in practice by clarifying what states' human rights obligations to people in older age are. It would take us closer to making human rights truly universal by ensuring that human rights are respected in older age as well as at other stages in people's lives. And, by clarifying how human rights apply in older age, it would enable people to better understand and assert their rights in older age.

This briefing presents our proposals for the content of such a convention.

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Purpose and scope of the convention

HelpAge's proposal on the scope and purpose of the convention is based on the experience of the older people that we work and interact with and our understanding of older age and ageism.

Older age and the life course

Dividing life into different stages has long been used as a way to understand our lives. How we demarcate and define these stages is affected by the social, cultural, demographic and economic context in which we live. So too is the timing of the major transitions and events in our life course. And this is dynamic. As populations age and we live longer and healthier lives, we understand older age as occurring later in our lives, and this is reflected in how we see ourselves and in the laws and policies that affect us.

Like other stages in our lives, how we define and respond to our own and others' older age is determined by prevailing social norms. Whether we see someone as an older person can have little to do with knowing his or her actual chronological age. Instead we often see someone as older based on whether they are active, working or retired, whether they have grandchildren, have grey hair or wrinkles. Such characteristics used to define older age can be impacted by cultural, political, socio-economic and other factors. The actual age at which people experience these events varies from person to person and one context to another. Why and when we as individuals self-identify as being older can also vary. There is, therefore, no specific age at which a person can or is likely to experience ageism as a result of older age and so in order to capture those subjected to ageism, a dynamic definition of older age is necessary.

Ageism

Older age and growing older has many positive aspects. The attainment of older age is celebrated and aspired to in many cultures. As we grow older we accumulate more experience that may benefit us and those around us. However, despite this, unlike other stages of our lives, the predominant attitude towards older age is that it is a time of decline, of loss, of vulnerability and dependency. We consider older people as a burden on society, useless and obsolete with no aspirations or future. We make assumptions about people's capacity based on their older age. We treat older people with pity and charity. This ageism is deeply rooted and often unrecognised in society, in policies, in law, in institutions, in the media and in our individual behaviour and attitudes. Ageism is manifested in stereotyping, prejudice, discrimination, harassment, vilification, abuse, exploitation, neglect and violence. Ageism results in prejudicial and stigmatising attitudes and behaviour that belittle, patronise and exclude us in our older age, deny us autonomy and dignity, and create barriers to enjoyment of our human rights on an equal basis with others in every aspect of life.

Discrimination may be based on older age alone but it may also exacerbate, or be exacerbated by, either the accumulated impact of discrimination over people's life course or by intersection with other forms of discrimination based, for example, on gender, race, or disability. The human rights issues facing older people are, therefore, not one-dimensional but extremely complex and as such require specific and dedicated attention.

Purpose and scope of the convention

This understanding of the social construction of older age and of deeply rooted ageism creating barriers to the enjoyment of human rights in older age on an equal basis with others across all aspects of life informs the purpose and scope of the convention.

The purpose of the convention must be to promote and provide for equality in order to protect and ensure the full and equal enjoyment of all human rights in older age. This requires both the prohibition of all forms and all grounds of discrimination in older age as well as specific measures to overcome the barriers that prevent older people from enjoying their rights on an equal basis with others. To do this the convention needs to highlight, reaffirm and articulate all human rights across every aspect of life and elaborate on what is required by States to give effect to these rights in older age.

The scope of the convention must include all people who are subjected to ageism and are discriminated against and denied their rights on the basis of their older age alone or in combination with other forms of discrimination.

What needs to be in the convention

We have divided our proposal into four sections:

1. Principles that underpin the convention
2. General obligations that apply across the convention
3. Specific human rights to be included in the convention
4. Implementation, monitoring and accountability mechanisms

1. Principles

- Non-discrimination
- Respect
- Dignity
- Autonomy
- Equality
- Self-fulfilment and personal development
- Full and effective participation and inclusion in society
- Respect for difference and diversity
- Accessibility

2. General obligations

A new convention must articulate States Parties' general human rights obligations in relation to each of the articles within it. These should include, but not be limited to:

- Adopting all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention.
Taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against people in older age based on age, either as a sole factor or in combination with another factor or factors which can intersect or accumulate over time, including sex, disability, religion or conviction, political or other opinion, physical, mental or cognitive health, degree of care and assistance required, marital or family status, economic status, access to technology, sexual orientation, gender identity or gender expression, migrant status, refugee status, being homeless, being deprived of liberty, indigenous, ethnic, racial, minority, national or linguistic status, property, geographical location, citizenship, nationality, HIV status, birth or any other condition or status.
- Taking special measures to ensure equality in practice.
- Guaranteeing the protection and promotion of the human rights of older people where relevant in all policies and programmes.
- Refraining from engaging in any act or practice that is inconsistent with the rights in the convention.
- Ensuring that third parties, for example, private sector contractors and enterprises, act in conformity with the rights contained in the convention.
- Taking all appropriate measures to eliminate discrimination against people in older age based on age, either as a sole factor or in combination with another factor or factors by any person, organization or private enterprise.
- Undertaking or promoting research on ageing and on issues particularly affecting people in older age, and ensuring data is collected, disaggregated, analysed, utilised and disseminated by all ages and sex
- Providing accessible, appropriate information to older people on their rights and entitlement to benefits and resources.
- Taking all appropriate measures to allow for older people's full and effective participation in society and decision-making processes.
- Developing policies and taking all appropriate measures, including awareness campaigns, to combat ageism and promote intergenerational cooperation and positive images of ageing, encouraging the dignified and respectful treatment of people in older age.

3. Human rights

Human Right	Components of the right and how implementation of the right can be achieved, including, but not limited to:
Non-discrimination	<ul style="list-style-type: none"> • Prohibition and guarantee of effective legal protection against discrimination on the grounds of age • Prohibition and guarantee of effective legal protection against all forms of discrimination: direct, indirect, by association, by perception or by multiple discrimination including intersectional discrimination or the accumulating discrimination that occurs on a number of occasions over a period of time, on the grounds of age alone or in combination with another or other ground(s) or factor (s) including, sex, disability, religion or conviction, political or other opinion, physical, mental or cognitive health, degree of care and assistance required, marital and family status, economic status, access to technology, sexual orientation, gender identity or gender expression, migrant status, refugee status, being homeless, being deprived of liberty, indigenous, ethnic, racial, minority, national or linguistic status, property, geographical location, citizenship, nationality, HIV status, birth or any other condition or status • Prohibition and guarantee of effective legal protection against all forms of discrimination against older persons in all aspects of life including but not limited to physical and mental health care, social care, financial services, employment, goods and services, inheritance and property, and taxation • Special measures, reasonable and positive action to ensure equality and non-discrimination of older people in practice
The right to autonomy and independence	<ul style="list-style-type: none"> • Autonomy, self-determination and choice in all aspects of life • Including in making decisions about their support and care, leisure time, property, income, finances, place of residence, health and medical treatment or care, personal relationships and funeral arrangements
The right to equal recognition before the law	<ul style="list-style-type: none"> • Recognition everywhere and at all times as persons equal before the law • Legal capacity and the right to exercise that legal capacity on an equal basis with others in all aspects of life • Support required to exercise legal capacity and to be an equal member of the family and of society
The right to self-fulfilment	<ul style="list-style-type: none"> • To continue to live lives of self-fulfilment • To continue to freely develop one's personality • To take on new challenges and opportunities
The right to leisure	<ul style="list-style-type: none"> • Participation in the arts, social and cultural life of the community in which they live • Non-discrimination in relation to access to leisure activities on the basis of age • Access to a variety of affordable recreational and leisure activities including for those receiving long term support and for women traditionally confined to their homes • To freely choose recreational and leisure activities and experiences
The right to life	<ul style="list-style-type: none"> • Prevention of non-consensual, arbitrary or discriminatory denial or rationing of health and other services, support or sustenance to older people which may be life threatening
The right to a dignified death	<ul style="list-style-type: none"> • To choose where to die • To refuse medical treatment or to withdraw consent • Equal access to holistic palliative care, including pain relief and without delay

	<ul style="list-style-type: none"> • Equal access to end of life care, including making advance instructions on type of care
The right to full and effective participation	<ul style="list-style-type: none"> • Full and effective participation in all spheres of life In public, political, cultural, economic and development activities • In decision making at household, community and national levels • In social and leisure activities including within the family, in the community and in long-term care and support settings • Upper age limits for standing for election, voting or participating in political or public life are prohibited
The right to age in place of choice	<ul style="list-style-type: none"> • Freely choose living arrangements, where and with whom to live, on an equal basis with others • Not be obliged to live in any particular living arrangement • To remain in the community
The right to housing	<ul style="list-style-type: none"> • Access to affordable, quality, appropriate, accessible housing designed to accommodate older people's requirements • Protection from illegal forced eviction • Security of tenure
The right to the environment	<ul style="list-style-type: none"> • To live in a safe and healthy environment • Access to drinking water, sanitation and other services on an equal basis with others
The right to personal mobility	<ul style="list-style-type: none"> • Access to transport on an equal basis with others that is affordable, physically accessible, available and safe, particularly in rural areas, and can be used without fear of abuse • Access to quality, affordable mobility aids and devices that can be used safely without fear of abuse or harm • Elimination of obstacles to mobility including in infrastructure and communications
The right to accessibility	<ul style="list-style-type: none"> • Access on an equal basis with others to the physical environment, to information, to communications and services and to public facilities in both urban and rural areas
The right to long term support for independent living	<ul style="list-style-type: none"> • Person-centred, affordable, appropriate, integrated, quality, holistic social, care and support services • Choice of, and access to, a range of options for where and with whom to live, who provides support and when, which support the ability to live independently • Support in decision-making where necessary and the opportunity to provide advance instructions on type of care and support • Access to appropriately trained care and support providers • Support and assistance for family and other informal care providers, including for respite care • Regulation, monitoring and enforcement of standards of support services provide by the state and by private enterprises, including not for profit organisations • Access to effective redress and complaint mechanisms • Confidentiality of information
The right to privacy and a family life	<ul style="list-style-type: none"> • Privacy, home and family life and correspondence wherever they temporarily or permanently reside • Non-discrimination in all matters related to privacy, home, communication, marriage and family, recognising the evolving concept of family to include such relationships as older people may choose, including extended caregiving roles and grandparenthood

	<ul style="list-style-type: none"> • Provision of social services and security to older people responsible for the care of grandchildren and other children
The right to sexual identity and expression	<ul style="list-style-type: none"> • Freedom to form intimate and sexual relationships, to choose sexual partners and to continue to have sex and to privacy in intimate relationships • Freedom of expression of one's sexuality and freedom from discrimination on the grounds of sexual orientation and gender identity • Access to information on sexual health, including on HIV and other sexually transmitted infections
The right to freedom from all forms of violence and abuse	<ul style="list-style-type: none"> • Freedom from all forms of financial exploitation, fraud and scams, concealment, physical, sexual and psychological violence, neglect, coercion, abandonment, medical abuse, harmful traditional practices, expulsion from the home and threats of any kind regardless of where the violence and abuse occurs and by whom • Specific attention to violence against women in older age • Training of all care providers, health care personnel, social workers, traditional or community healers, government officials, judiciary and law enforcement in how to recognise and respond to situations of violence and abuse in which older people may be particularly at risk • Effective legislation and policies that ensure all forms of violence and abuse in older age are identified, reported, investigated and where appropriate prosecuted • Awareness raising and other measures to prevent all forms of violence and abuse in older age • Accessible and appropriate victim support services • Access to effective remedies and redress
The right to freedom from torture, cruel, inhuman or degrading treatment	<ul style="list-style-type: none"> • Recognition that violence and abuse of older people, including in settings where they are detained or receive support, services or care, can reach the threshold of torture, inhuman or degrading treatment and requires protection on an equal basis from being subjected to such treatment • Policies and standards to protect against the arbitrary use of physical, chemical, mechanical, psychological or environmental restraints, close observation, surveillance and seclusion
The right to work and employment	<ul style="list-style-type: none"> • Non-discrimination on the basis of age in all matters of employment in the formal and informal sectors, including harassment on the basis of age • Prohibition of mandatory retirement on the basis of age • Decent working conditions including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment and redress of grievances • Meaningful work • Access to re-training for a changing workplace • Reasonable accommodation made for gradual transition to retirement • Exercise of labour and trade union rights • Promotion of employment opportunities in the labour market and self-employment • Protection from slavery, servitude, forced or compulsory labour
The right to an adequate standard of living	<ul style="list-style-type: none"> • Access to basic necessities and amenities, including water and sanitation, nutritious and affordable food, clothing, housing and fuel • Access to programmes and technologies providing assets and support for food production • Access to poverty reduction programmes • Continuous improvement of living conditions

<p>The right to social security and social protection</p>	<ul style="list-style-type: none"> • Access to social security including an adequate, guaranteed, minimum income in older age • Unconditional, autonomous use of income from social security schemes • Access to and portability of pensions in cases where older people have spent time migrating / working overseas earlier in their lives • Access to appropriate social assistance and in-kind social security • Access to financial support to pay for age-related health care, medication and aids • Effective and accessible procedures for complaint and appeal • Access to information on all aspects of social security schemes, including eligibility • Support in application processes including for those without identity documentation
<p>The right to health</p>	<ul style="list-style-type: none"> • Non-discrimination in access to comprehensive health services on the basis of older age • Accessible, available, affordable, appropriate and quality physical, mental and cognitive health services • Access to holistic palliative care, including access to essential drugs and controlled medicines • Access to sexual and reproductive health services, including for prevention and treatment of HIV and other sexually transmitted infections, and post menopausal health services for women • Autonomy in terms of informed consent for, and choice of, treatment • Opportunity to make advance instructions about health care, including palliative and end of life care • Access to health information in appropriate formats • Access to healthcare workers with relevant training in geriatric, dementia and palliative care • Confidentiality of, and personal access to, medical records • Benefits of scientific progress • Integration of health care services with services and support for independent living
<p>The right to information</p>	<ul style="list-style-type: none"> • To seek, receive, impart and request information by the communication medium of their choice • Access to information in accessible and appropriate formats • Access to information on a range of goods and services and on older people's rights and entitlements • Access to appropriate advice
<p>The right to lifelong education and learning</p>	<ul style="list-style-type: none"> • Equal access to opportunities for all levels of education, including tertiary education, vocational training and retraining, adult education, and skills training in literacy, numeracy and technological competencies • Educational materials in an appropriate format
<p>The right to property</p>	<ul style="list-style-type: none"> • To deal with property including to own, use, occupy, transfer, sell, inherit and distribute land and other property • Participation in the redistribution of land and property programmes on an equal basis with others • Ensure they are not arbitrarily or unlawfully deprived of their property • Access to effective remedies to provide redress for arbitrary or unlawful deprivation of property • Elimination of traditional widowhood practices which deprive women of property and inheritance rights • Equitable access to financial services, including bank loans, micro-loans, mortgages and other forms of financial credit • Transparent and reviewable mechanisms by which land and other property are levied or dealt with in a material way in exchange for, or to pay for, the provision of

	support and care services
The right to justice	<ul style="list-style-type: none"> • Access to legal services, including legal assistance and legal aid on an equal basis with others • To a hearing within a reasonable time, with special measures in situations of immediacy • To accommodations in judicial proceedings to facilitate their effective role as participants at all stages of legal proceedings on an equal basis with others • To redress and effective remedies
The right to freedom of expression and opinion	<ul style="list-style-type: none"> • To impart and to pass on opinions, knowledge and experience • To exercise, manifest or change one's religious beliefs
The right to freedom of association and assembly	<ul style="list-style-type: none"> • Ability to form older people's groups and associations for all purposes including, inter alia, political, income generating, cultural or religious, or protection of their interests • To participate in other social, political, income generating, cultural or religious groups on an equal basis with others
The right to personal liberty	<ul style="list-style-type: none"> • Any restriction or deprivation of liberty is in accordance with the law and proportionate • Age is not used as justification for deprivation of liberty • Effective access to justice for any older people deprived of their liberty including through special measures to prevent unnecessary delay in the legal process • For those deprived of their liberty, the right to appropriate accommodation in prisons and other places of detention, to regular monitoring of health and provisions of appropriate physical, mental and cognitive health care, to appropriate access to sanitary, sports, education, training and leisure facilities, to release from prison if no longer a threat to society and to support on re-entry into society on release from prison
The right to freedom of movement and nationality	<ul style="list-style-type: none"> • To acquire and change a nationality on an equal basis with others and not to be deprived of their nationality arbitrarily • Freedom to leave or enter any country on an equal basis with others • No deprivation on the basis of their age of older people's ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration and asylum proceedings, that may be needed to exercise of the right to liberty of movement
Rights in emergency contexts, including situations of armed conflict and humanitarian disasters	<ul style="list-style-type: none"> • Identification of, and consultation with, older people to assess their needs for assistance and protection, and their capabilities for recovery, as part of the design and delivery of appropriate humanitarian responses, including resettlement and durable solutions, prevention and response to rights violations, promotion of a protective environment, peace and reconciliation efforts as well as economic recovery and support to families • Access to appropriate, accessible, safe, dignified and adequate essential services including assistance with registration and documentation requirements, food, water and sanitation, fuel, shelter, opportunities for family reunification, transport, health care, psycho-social and nutrition support, livelihood intervention on an equal basis with others • Where appropriate, and based on assessment of older people's needs, delivery of services designed and adapted to address the specific requirements of older people relating to their age, for example in health care, psycho-social and nutrition assistance

	<ul style="list-style-type: none"> • Access to information about the emergency, the changing security situation, and the availability of humanitarian assistance and rights protection services on an equal basis with others • Responsive disaster preparedness planning, policy and legislation to reduce older people’s risk in disasters
International co-operation	<ul style="list-style-type: none"> • International co-operation for the realisation of the purpose and objectives of the convention, international development programmes, is inclusive of, accessible to, and of benefit to all older people

Older people in particular situations of risk

Particular attention must be paid to ensuring the rights of older people in particular situations of risk. These include, but are not limited to older women where gender, age, sexual orientation and/or marital status related discrimination may intersect or accumulate over time; older people living in residential and other long-term care facilities, including their right to freedom of movement in these settings; older people deprived of their liberty, for example in prison, in detention centres and in other settings; older people in situations of humanitarian risk; older people with disabilities; older people with dementia; and older lesbian gay, bi-sexual, transgender and intersex people.

4. Implementation, monitoring and accountability

To be effective a new convention must establish strong implementation, monitoring and accountability mechanisms at both the international and national level.

Implementation

At the national level, a new convention should establish a co-ordinating mechanism with responsibility to implement the provisions of the convention in ratifying countries, i.e. States Parties.

Focal points should be established within national government to facilitate a range of actions related to implementing the provisions of the convention.

Attention should be given to measures to support capacity building of States Parties and other stakeholders to implement the provisions of the convention.

Monitoring and accountability

The convention should establish independent national monitoring bodies in each ratifying country (i.e. States Parties). Civil society, in particular older people and the organisations that represent them, should be involved and participate fully in these monitoring bodies.

Individuals should be afforded access to enforceable individual complaint mechanisms at the national level.

At the international level, a new convention should create an independent treaty body to monitor States Parties on national implementation, receive periodic reports, receive complaints, conduct investigations and make recommendations on compliance with provisions within the instrument.

A new instrument should be open to signature and ratification and/or accession by regional integration bodies.

Reference sources

This briefing paper draws on a range of sources, including:

- Discussions at, and reports from, the five sessions to date of the Open-ended Working Group on Ageing
- In Our Own Words. What older people say about discrimination and human rights, GAROP, 2015 consultation
- Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Person in Africa, CAMSD/EXP/4(IV), June 2014
- Draft Inter-American Convention on the Human Rights of Older Persons, OEA/Ser.G, CAJP/GT/DHPM/INF.34/14, 17 November 2014
- Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of the human rights of older persons
- Chicago Declaration on the Rights of Older Persons, v 10.2, 15 July 2014
- Convention on the rights of older adults and optional protocol to the convention (version 6), FIAPA, 2 December 2012
- Commentary and Draft Articles of a Convention on the Rights of Older Persons, National Association of Community Legal Centres (NACLC), Australia, 2014
- Declaration of Rights for Older People in Wales, 2014
- European Charter of the rights and responsibilities of older people in need of long-term care and assistance, Daphne Project, June 2010
- Charter of Rights for People with Dementia and their Carers in Scotland, 2009
- Main elements of a new legal international instrument to promote and respect the rights and dignity of older persons, HelpAge International, May 2013
- Universal Declaration of Human Rights, 1948
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Covenant on Political and Civil Rights, 1966
- Convention on the Rights of the Child, 1989
- Convention on the Rights of Persons with Disabilities, 2006
- Handbook on Prisoners with Special Needs, UN Office on Drugs and Crime, 2009

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