

# Protecting the Human Rights of Older Persons

By Andrew Byrnes

In light of the devastating discrimination against older adults seen worldwide during the COVID-19 pandemic, it is time for the global community to respond using existing international protections of human rights while also considering new treaties. A new treaty on human rights addressing older age would provide a clear, coherent, and comprehensive statement to encourage reform and provide guidance for governments, policymakers, courts, and advocates. We must act to protect the human rights of older adults and provide the necessary resources for existing bodies to address the issue.

The COVID-19 pandemic shone a light on the ways in which older persons are marginalized, devalued, rendered invisible, and neglected. The staggering number of older adults who died of COVID-19 brought the issues of human rights for older adults to the forefront. Not only were older adults dying by the tens of thousands around the world, some were neglected in long-term care facilities, while others were isolated from their families and communities. Further, the emergence of ageist attitudes, and divisive discourses of intergenerational competition, were among the more pronounced features characterizing the responses in some countries. Finally, financially disadvantaged older adults were disproportionately harmed during the pandemic.

It's important to acknowledge that older adults, of course, were not the only group adversely impacted by the pandemic, and that it affected many other groups in different ways. Children, women, indigenous peoples and ethnic minorities, among other groups, also suffered in distinctive ways. In some cases we still do not fully understand the long-term implications of the pandemic on people's health. For instance, we don't know how long COVID will affect younger people as they age. Yet there is no doubt that the pandemic, and how governments responded to it, reinforced previous structures of ageism, while laying bare clear discrimination against older persons. This isn't to discount the affirming examples of intergenerational solidarity as communities, including many younger people, sought to support older relatives and community members during lockdowns and other restrictions. But those successes were not enough to undo longstanding ageist practices.

Given the disproportionate effect of the pandemic on older adults, there was — initially, at least — a new urgency to the discussions at the

United Nations regarding the necessity of a new treaty and what it should look like.

## A long history of human rights violations against older adults

Human rights violations against older adults are numerous and widely documented around the world. These violations include the denial of legal capacity, restrictions on enjoyment of the right to live independently and in the community, elder abuse (including physical, psychological and financial abuse), and employment discrimination. Still another example includes older adults left financially unstable with an inadequate standard of living upon exiting the paid labor force. This comes in many forms, including having no pension or an inadequate one (government or private), and discrimination against women in the form of lack of retirement income. The list continues. A lack of access to lifelong learning and education, and capacity-building opportunities as well as technology accessibility issues in the context of digitization and online government, are among many other discriminatory practices facing older adults. These violations of human rights exist globally, in high-, low-, and middle-income countries.

In recognition of these persistent violations, calls for a new convention on human rights in older age began a decade ago. The general premise of these calls was to reaffirm that older persons hold rights under existing treaties. The goal was to provide detailed guidance on the steps states could take to ensure older persons fully enjoy their rights. International human rights law is no panacea, but such standards can provide a significant, focused stimulus to action.

## Existing human rights law

Many continue to argue that the existing treaties and mechanisms for protecting human rights adequately extend to protect older adults and are reluctant to accept a new convention that explicitly prohibits discrimination on the basis of older age. These rights are guarantees against discrimination and affirm the right to life and freedom from torture; they are enjoyed by everyone by virtue of being human. The arguments for relying on existing law to protect older persons vary, but a recurrent one is that existing law is up to the task and that better implementation is the answer.

These treaties exist at the United Nations, where the standards are potentially applicable to all countries in all regions of the world. Current treaties generally address civil, political, economic, social, and cultural rights (the International Covenants). Notably, others focus on particular types of violations, even toward specific groups: racial discrimination, discrimination against women, rights of the child, rights of persons with disabilities, rights of migrant workers, protection against torture and disappearances. Each of these thematic treaties addresses particular violations or protect specific groups.

Virtually none of these treaties mention older persons or discrimination on the basis of older age, though a number prohibit discrimination on the basis of “other status,” which includes older age among a multitude of other characteristics. Some rights that apply to older adults, such as the right to social security, do appear in the treaties as a category of required social welfare supports. Because older people and their concerns are largely absent from the text of the treaties, they receive a relatively low priority in enforcement.

### The argument for a new treaty

While existing treaties address sexism, ableism and racism, there is no explicit obligation to address ageism and ageist practices. Existing treaties do not provide any clear guarantee of a right to care and support to enable older persons to age in place, remaining in their own home and community (rather than being forced into a long-term care facility). Further, the treaties do not directly address many forms of elder abuse, including financial abuse, nor do they provide a clear guarantee of the right to palliative care as part of the right to health. Even among the treaty provisions that do relate to aging, there is a need to update them to better reflect current trends in longevity. For instance, provisions relating to work guarantees and “post-work” support are largely premised on a traditional three-stage life of education, work, and “traditional” retirement, ignoring the needs and protections of those who continue to work later into life. Additionally, rights to education and lifelong learning focus on younger people both in their formulation and implementation.

Given the obvious holes in the existing standards, I, along with other advocates, believe it is a necessity to strengthen current international policy with a new treaty specifically addressing ageism. The reasons for this are structural — that is, they involve the conceptual limitations and

deficiencies of current standards, formulated without regard to the nature and today’s realities of older age and its social meanings, and the operational limitations of existing mechanisms. We can make some progress with the tools that we have, but to complete the job we need a new set of tools in the form of a new convention.

The evidence showing the need for such action is now emerging. A 2021 study by the Office of the United Nations High Commissioner for Human Rights supports this approach. The study describes how the existing UN human rights system addresses human rights and older age as well as its limitations and deficiencies. The findings reveal a fragmented system that is generally not systematic or sustained. Missing from the existing norms is an understanding of the nature and social construction of older age and the implications of increased longevity for both individuals and larger populations, the study found.

Clearly, it is time for action. The current system lacks a comprehensive and coherent framework on human rights in older age comparable to those for women, children, and persons with disabilities, to underpin its work. Only a new treaty will be able to provide the push and focus that is needed. ●

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Update to the 2012 Analytical Outcome Study prepared by the Office of the High Commissioner for Human Rights on the normative standards in international human rights law in relation to older persons, working paper prepared for the 11th session of the United Nations General Assembly Open-Ended Working Group 2021, <https://social.un.org/ageing-working-group/documents/eleveth/OHCHR%20HROP%20working%20paper%2022%20Mar%202021.pdf>

*Andrew Byrnes acted as a consultant to the UN OHCHR in the preparation of the updated study. The views expressed in this article are his own and do not necessarily represent those of the United Nations.*



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