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Submission by the Finnish National Human Rights Institution (Human Rights Centre) to the UN Open-ended working group for ageing's co-facilitators' questionnaire "Identification of possible gaps in the protection of the human rights of older persons and how best to address them."

The Questions

Identification of gaps

1. For each of the topics that have been considered by the Open-ended Working Group since its eighth session, please state possible gaps your Government/organization has identified in the normative framework and practical implementation for the protection of the human rights of older persons. (500 words each)

a) Equality and non-discrimination

Age is not explicitly mentioned as grounds for discrimination in core UN human rights instruments. As a result, age is not as widely recognised as grounds for discrimination as others and is often forgotten. Age discrimination is included regionally in the Charter of Fundamental Rights of the European Union¹ but in only applies to EU member states while implementing EU law. Nationally age is included as grounds for discrimination in the Finnish constitution².

There are widespread harmful, paternalistic and ageist attitudes towards older persons, as they are often not seen as independent legal subjects. Instead, the focus is on the ways to provide care and services for them. Prejudice and harmful attitudes are particularly present with older people who belong to a linguistic and/or cultural minority. The diversity of older people as a group is not recognised enough. Existing international, regional or national legislation has not been sufficient in changing these attitudes, but instead often support them.

Many countries, including Finland function increasingly digitally. Important services like the social insurance institutions, governmental administration services and banking services are mainly handled online and through phone applications. Accessibility from the point of view of older persons is not always taken into consideration and older people are getting left behind in their digital skills. Creating non-digital options for equal accessibility is often insufficient. There is a lack of international legislation targeting older peoples' participation

¹ Charter of Fundamental Rights of the European Union, 2000/C 364/1 (2000), Article 21.

² Constitution of Finland 731/1999 (1999), Section 6.

in digital societies. Regional and national legislation is also insufficient.

b) Violence, neglect and abuse

Older persons are next to invisible in international instruments regarding violence, neglect and abuse. There are, however, some mentions of older persons, mainly women, in international human rights instruments.

According to the UN CEDAW Committee's Recommendation on the human rights protection of older women, states parties have an obligation to identify and prohibit violence against older women, including violence against disabled older women, in legislation related to domestic violence, sexual violence, and institutional settings. States parties should investigate, prosecute, and punish all acts of violence against older women, including those resulting from traditional or religious practices.³

The explanatory memorandum on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence states that the Convention must be applied without discrimination. In addition, proactive measures to prevent violence must be employed, taking into account the needs of vulnerable individuals. Attacks often target those in vulnerable positions, as they are less likely, due to their circumstances, to defend themselves and seek legal protection. When applying the Convention, individuals in such vulnerable positions include pregnant women, women with young children, disabled individuals, those living in remote areas, substance abusers, sex workers, persons belonging to national or ethnic minorities, persons with immigrant backgrounds, gender minorities, persons who are HIV-positive, homeless people, children, and older persons.

The Independent Expert on the enjoyment of all human rights by older persons submitted a report on Violence against and abuse and neglect of older persons in 2023.⁴ The report concludes that an increase of violence against older persons has been seen during ongoing crises such as the COVID-19 pandemic, armed conflicts and climate change. (...) Owing to the sporadic implementation of prevention and protection measures and the uncoordinated response to abuse of older persons, interventions to prevent and respond to such abuse have not demonstrated efficacy and efficiency in high-quality evaluations. (...) The current international human rights framework does not provide the protection necessary for older persons to live free from violence, abuse and neglect in diverse settings and does not consider the multiple grounds of unequal treatment.

Finland is party of the Council of Europe Convention on Preventing and Combating violence against Women and Domestic Violence. In the Action Plan for the Istanbul Convention for 2022–2025 the Finnish Ministry for Social Affairs and Health does not mention older persons or older women at all. This was noted also by the Independent expert on the enjoyment of all human rights by older persons who, in her report regarding her country visit to Finland, pointed out that while the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence seemed to be well implemented in Finland, the Independent Expert was informed that it does not seem to be used to tackle issues related to violence against older women.⁵

c) Long-term care and palliative care

The Deputy Parliamentary Ombudsperson of Finland evaluated issues in palliative care and post-operative care of older persons in 2022. According to an investigation conducted by the National Supervisory Authority on Health and Welfare in the spring of 2022, there

³ The United Nations Committee on the Elimination of Discrimination against Women, General Recommendation No. 27 on the human rights protection of older women in 2010 (CEDAW/C/GC/27).

⁴ A/HRC/54/26.

⁵ A/HRC/51/27/Add.1.

are relatively established practices regarding the use of physical restraint measures in elderly housing units. However, the observations made during the Deputy Ombudspersons inspections indicate that even these established practices can be contrary to the law, international human rights agreements, and professional ethical principles. A common observation is that existing guidelines focus on the methods and usage of restraint measures, as opposed to methods and practices to promote self-determination and autonomy and to prevent the need for restraint.

The Deputy Ombudsperson has also taken note of the possibilities older persons living in long term-care facilities have for outdoor activities. In her visit to a long-term care facility in 2020, she observed that regular outdoor activities were not organized for the residents of the facility. She stated that ensuring sufficient outdoor activity is about meeting basic needs and, in turn, respecting human dignity. Special attention must also be given to residents who cannot move independently and cannot clearly express their own will. She referred to the guidelines of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁶ and stated that residents should be provided with daily opportunities for outdoor activities, and the goal should be unrestricted access to outdoor activities.⁷

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has produced a checklist for visits to social care institutions where persons may be deprived of their liberty.⁸

The list consists of general questions and specific questions regarding ill-treatment, living conditions, health care, means of restraint, safeguards in the context of involuntary placement, safeguards regarding persons who are deprived of their legal capacity, and other issues, such as residents' possibilities to be in contact with the outside world. The Human Rights Centre feels that this checklist frames quite comprehensively the possible and all too frequent problems that may occur in long-term care.

f) Education, training, lifelong learning and capacity-building

The right to education is protected in the International Covenant on Economic, Social and Cultural Rights⁹. While the Covenant states that higher education should be made equally accessible for all, it does not include specific provisions on older people. Regionally, the Charter of Fundamental Rights of the European Union also protects the right to education¹⁰, without specifically mentioning older people. There rarely are age limits to participating in education, but older people generally participate in education less than younger people. Training and capacity-building is often focused on the needs of those still actively working.

Older people are being left behind particularly in digital skills, which are increasingly important. Learning new skills enables older persons to participate in societal matters and keep up with new developments. It is therefore crucial that lifelong learning is supported. In Finland, older people can participate in many types of education, from primary school level studies to secondary education. Education is also possible in prisons. However, the number of older people participating in studies is small. A larger number of older persons participate in courses and training that do not include obtaining a degree. Courses like these are especially important for older people and the organization and resources of such courses should be ensured by stronger legislative means.

h) Access to justice

⁶ <https://rm.coe.int/16809f8fa8>

⁷ [Ennalta ilmoittamaton tarkastus 11.3.2020 ja etätarkastus 5.10.2020, Koivupiha \(oikeusasiat.fi\)](#)

⁸ <https://rm.coe.int/16806fc22b>

⁹ International Covenant on Economic Social and Cultural Rights, Articles 13 and 14.

¹⁰ Charter of Fundamental Rights of the European Union, Article 14.

Challenges in accessing justice are in general quite similar in different age groups. However, there are also problems that are particularly common among older persons, such as end-of-life arrangements, caregiving and guardianship. Access to healthcare, and the right to quality care are also matters that often come to the forefront. Coping with memory disorders and dementia can pose problems. A person's autonomy may be challenged for example regarding social and health services, living arrangements or in relation to the person's family. There may not be supported decision-making or communication aids available when needed.

Digitalization of society presents various challenges to older people also in access to justice. Older individuals may lack proficiency in using digital devices or applications, or they may have physical impairments that make such usage difficult. Devices and systems are not necessarily designed for persons with for example memory-related disabilities. This can also have legal implications. Problem-solving may become more challenging when it's hard to find alternative non-electronic channels for interaction with multiple authorities. Difficulties in using electronic services can, in themselves, create issues when, for example, paying taxes or bills becomes more complicated.¹¹ Digital discrimination may cause older persons' self-determination and agency to weaken prematurely.

Physical accessibility, digital accessibility, cognitive accessibility and the affordability and availability of appropriate legal aid and other assistance are key factors in older persons' access to justice. Although most of these factors are covered in international human rights instruments, they fail to be implemented in the lives of many older persons.

i) Contribution of Older Persons to Sustainable Development

While the right to participate in, and contribute to, development is affirmed in the Declaration on the Right to Development¹², older people have not been explicitly mentioned in the Declaration. Age is also not mentioned as grounds for discrimination in Article 6 of the Declaration. Article 25 of the International Covenant on Civil and Political Rights¹³ recognizes the right to participate in public affairs. Older persons are not specifically taken into consideration regarding contribution to sustainable development in any international treaty, even though effective and meaningful participation enables the advancement of human rights. Understanding the contribution of older persons to sustainable development would enable States to identify steps that can be taken to better ensure older persons' right to participate in sustainable development.

In matters regarding sustainable development the focus is often on young people and the voices of older people is not always heard. For example, age limits on surveys often leave out the experiences and ideas of older people. Enabling effective and meaningful participation in sustainable development is important as there are several needs and effects that specifically older people face.

n) Participation in the public life and in decision-making processes

The right to participate in public life is protected in the International Covenant on Civil and Political Rights¹⁴ and the Convention on the Rights of Persons with Disabilities¹⁵. There are, however, no specific provisions on older persons' right to participation. Enabling public participation in public life and decision-making for older people is crucial for the realisation of older persons' human rights.

There is a lack of data on several challenges that particularly older people face. Research, questionnaires and reports often do not include people over 65 years old, or the oldest

¹¹ <https://rikoksentorjunta.fi/-/haaste-3-22-ikaantyneiden-oikeuden-saaminen>

¹² UN Declaration on the Right to Development.

¹³ International Covenant on Civil and Political Rights, Article 25.

¹⁴ International Covenant on Civil and Political Rights, Article 25.

¹⁵ International Convention on the Rights of Persons with Disabilities, Article 29.

reference groups is 65+. This leaves the challenges faced by the oldest age groups in the dark. Sufficient data collection is not required by any legal instrument, which leaves many problems uncovered and unattended.

The challenges in participation in public life and decision-making for older persons have been recognised nationally as well. The Deputy Ombudsman of Finland discussed the realisation of the right in her statement. According to the statement international and national legislation on equality and non-discrimination in addition with national legislation protecting older person's rights does not allow older persons to be left out of data collection and surveys without a legitimate reason. However, the existing legislation is not sufficient to protect the right to participate in practice, as older people continue to be left out. International equality and non-discrimination legislation alone is not enough to truly protect the right of older persons to equally participate in public life and decision-making.

Participation should be enabled equally. Therefore, enabling participation solely digitally is not acceptable. States should ensure that there are different ways in which a person can participate, taking into consideration also the diversity of older persons as a group. Sufficiently enabling participation in public life and decision-making could lessen ageism and discrimination in public life and decision-making processes.