



AMNESTY INTERNATIONAL'S RESPONSES TO THE OEWGA QUESTIONNAIRE

IDENTIFICATION OF POSSIBLE GAPS IN THE PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS AND HOW TO BEST ADDRESS THEM

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Cover photo: A Rohingya man, around 100 years old, walks from his shelter to a mosque in Camp #10 (Balukhali Camp), Bangladesh, February 2019.

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BACKGROUND:

At the UN Open-Ended Working Group on Ageing (OEWGA), during its 13th session in April 2023, member states adopted a decision calling on states and civil society organizations to address potential gaps in international human rights protections for older people in advance of the 14th session of the OEWGA in 2024.¹

As part of this process, the co-facilitators of an intersessional working group of OEWGA sent the below questionnaire to member states, national human rights institutions, and non-governmental organizations with ECOSOC status.²

ABOUT AMNESTY INTERNATIONAL:

Amnesty International is a global movement of 10 million people in over 150 countries and territories campaigning for a world where human rights are enjoyed by all. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

We conduct human rights research, advocacy, and campaigning in over 100 countries in the world. Since 2018, Amnesty International has been building a dedicated body of research on older persons, particularly older persons in situations of armed conflict and emergencies; you can see specifics on our work at the following page: <https://www.amnesty.org/en/what-we-do/older-people/>

We have documented violations of older people's rights in many countries including [Armenia](#), [Azerbaijan](#), [Belgium](#), [Italy](#), [Mozambique](#), [Myanmar](#), [Nigeria](#), [Spain](#), [Türkiye](#), [Ukraine](#), the [United Kingdom](#), and [Yemen](#). Our research findings from these countries are reflected in the below responses to the questionnaire.

¹ A/AC.278/2023/L.1/REV.1

² https://social.un.org/ageing-working-group/documents/Intersessional%20Events/Questionnaire_e.pdf

THE QUESTIONS:

1. *Identification of Gaps: 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

Ageism – “prejudice, stereotypes and discriminatory actions or practices against older people on the basis of chronological age or the perception that they are ‘old’”³ – is pervasive in society, and has serious consequences for the health, well-being and human rights of older people.⁴ Ageism is an important root cause of human rights violations and abuses against older people,⁵ including physical abuse.⁶

Ageism often compounds inequalities that stem from other grounds, including disability, gender or migrant status. In Myanmar, Amnesty International found that displaced older people were often excluded from livelihood training and assistance programmes for displaced communities, in large part because of ageist assumptions and attitudes.⁷ The humanitarian response for Rohingya refugees in Bangladesh overlooked the unique challenges that older people faced and failed to meet their rights and needs including those related to health, sanitation, food, water and participation.⁸ In Ukraine, Amnesty International has documented the unique challenges faced by older people with disabilities.⁹

Yet international human rights law does not offer strong, explicit protection against discrimination on the basis of age, and it does not contain positive obligations for states to combat prejudice and stereotypes on the basis of age. In the core human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), age is not explicitly mentioned as a prohibited ground of discrimination.¹⁰ While the prohibition of discrimination on the grounds of “other status” has been interpreted as applying to age,¹¹ in stark contrast to other forms of discrimination, discrimination on the basis of age can be considered permissible under international human rights law.¹² Detailed guidance on age discrimination is scarce, and some sources contain outdated language or lack understanding of ageism and the social construct of ageing.¹³ The lack of a clear, explicit prohibition of age discrimination creates ambiguity and a lack of oversight, and can signal that age discrimination is taken less seriously than discrimination on other grounds.¹⁴

A specific UN convention for the rights of older persons is the most appropriate instrument to enshrine a clear, strong and specific prohibition of discrimination on the basis of age, and to establish positive obligations on states to combat prejudice and stereotypes on the basis of age.

B) VIOLENCE, NEGLECT AND ABUSE

Amnesty International has documented the disproportionate risks of violence, neglect and abuse that older people face, particularly during armed conflict and other crises.

3 Report of the Independent Expert on the enjoyment of all human rights by older persons, 4 August 2021, A/HRC/48/53, para. 21.

4 World Health Organization, Global report on ageism, 18 March 2021.

5 UN Office of the High Commissioner for Human Rights, Update to the 2012 analytical outcome study on the normative standards in international human rights law in relation to older persons, March 2021, para. 33; WHO, Global report on Ageism, 2021.

6 Report of the Independent Expert on the enjoyment of all human rights by older persons, 7 August 2023, A/HRC/54/26, para. 14-16.

7 Amnesty International, Myanmar: “Fleeing my whole life”: Older people’s experience of conflict and displacement in Myanmar, June 18, 2019, ASA 16/0446/2019, <https://www.amnesty.org/en/documents/asa16/0446/2019/en/>

8 Ibid.

9 Amnesty International, Ukraine: “I used to have a home”: Older people’s experience of war, displacement, and access to housing in Ukraine, December 6, 2022, EUR 50/6250/2022, <https://www.amnesty.org/en/documents/eur50/6250/2022/en/>

10 Age is only explicitly mentioned as a prohibited ground of discrimination in the Convention on the Rights of Migrant Workers and in the Convention on the Rights of People with Disabilities.

11 Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, Dec. 8 1995, para. 12; and CESCR, General Comment No. 20, 2 July 2009, para. 29. Although the ESC Committee does not conclude that discrimination on the basis of age is comprehensively prohibited by the ESC Covenant, “the range of matters in relation to which such discrimination can be accepted is very limited” and discrimination on the basis of age is prohibited in “several contexts”.

12 CESCR, General Comments No. 6 and No. 20; Report of the Independent Expert on the enjoyment of all human rights by older persons, 4 August 2021, para. 40-41.

13 CESCR General Comment No. 6: “the problem of demographic ageing” (para. 11), “the detrimental effects of ageing” (para; 24) and “families who wish to keep elderly people at home” (para. 31); the UN Principles on Older Persons do not mention ageism or age discrimination, but refer to “frail older persons” and to how older people should be able to live at home “for as long as possible”. Also see Georgantzi, A., Developing a new framework for human rights in older age: exploration, interpretation and application, NUI Galway, 2020, p. 206 et seq.

14 OHCHR, Update to the 2012 analytical outcome study, para. 106.

Older people often struggle to flee areas of armed conflict. This is because they are more likely to have disabilities that make fleeing physically difficult, may lack access to information about evacuation routes, and are more reluctant than other groups to abandon their homes or property, which are often their only valuable assets.

In Ukraine, since Russia's full-scale invasion began in February 2022, older people have been more likely to be killed or injured amid the conflict. Despite making up just under one-fourth of the population, OHCHR said that people over the age of 60 made up 32% of civilian deaths in cases where the age was known.¹⁵ Older people in Ukraine often told Amnesty International that shelters were physically inaccessible to them, and they lacked information about evacuation routes, particularly if it was distributed online. A 61-year-old woman in Chernihiv, who lived with her husband who had an amputated leg and used a wheelchair, said: "Nobody told us about evacuations, I always found out only afterwards."¹⁶

Similarly, older Rohingya women and men fleeing the assault of the Myanmar military faced disproportionate risks. Via rigorous quantitative surveys carried out in refugee camps in Bangladesh, Médecins Sans Frontières (MSF) estimated that, during the military's attack on the Rohingya population in the month after 25 August 2017, the highest rates of mortality by far were among people aged 50 and older, with violence being the direct cause of death in the clear majority of cases.¹⁷ In Nagorno-Karabakh, people over 60 years old made up more than half of civilian deaths amongst ethnic Armenians in the 2020 fighting between Armenia and Azerbaijan; many were subjected to extrajudicial executions, including by beheading.¹⁸

Older people in conflict-affected areas are often not spared from arbitrary detention by security forces. In Northeast Nigeria, for example, after fleeing Boko Haram-controlled areas, older people were among the tens of thousands that the Nigerian military arbitrarily detained. Amidst the grossly inhuman conditions of military detention sites, including extreme overcrowding, lack of access to adequate food, water and sanitation, and lack of access to healthcare, older people made up a disproportionate number of the thousands of deaths in custody.¹⁹ In Azerbaijan, where dozens of ethnic Armenian civilians were held in custody after being detained in Nagorno-Karabakh, some older men were forcibly disappeared, while others were subjected to torture and other ill-treatment, including beatings, before being released. In some cases, older men appeared to have been targeted for ill-treatment on the basis of their age, because Azerbaijani soldiers believed they had participated in Armenia's war effort during the 1990s.²⁰

While the Fourth Geneva Convention and other principles of international humanitarian law apply to older people as to all civilians,²¹ our documentation has shown time and again that older people remain at disproportionate risk of violence during armed conflict. States often do not have age-inclusive evacuation or emergency plans that would ensure older people are not left behind. A UN convention on the rights of older persons would clarify States' obligations arising from the right to be free from violence, abuse and neglect, and how this would be implemented in practice, including during armed conflicts. It would also clarify older persons' right to access remedies and redress as a result of violence during armed conflict.

C) LONG-TERM AND PALLIATIVE CARE

Amnesty International has found that older people do not always have access to long-term care in the community on an equal basis with others. This often results in their placement in long-term care institutions, where they can be at greater risk of neglect and abuse. Unlike the institutionalization of children and young adults, which has been on the decline in Europe and Central Asia for at least a decade according to a 2017

15 Office of the High Commissioner for Human Rights (OHCHR), Briefing Paper: The Human Rights Situation of Older Persons in Ukraine in the Context of the Armed Attack by the Russian Federation, May 2023, <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/2023-HRMMU-Briefing-Note-Older-Persons-ENG.pdf>, p. 6.

16 Amnesty International, "I Used To Have A Home": Older People's Experience of War, Displacement, and Access to Housing in Ukraine (Index: EUR 50/6250/2022), 6 December 2022, <https://www.amnesty.org/en/documents/eur50/6250/2022/en/>, p. 81.

17 See Médecins Sans Frontières (MSF), Myanmar/Bangladesh: Rohingya crisis - a summary of findings from six pooled surveys, 9 December 2017, www.msf.org/en/article/myanmarbangladesh-rohingya-crisis-summary-findings-six-pooled-surveys

18 Amnesty International, Last to flee: Older people's experience of war crimes and displacement in the Nagorno-Karabakh conflict (Index: EUR 54/5214/2022), 17 May 2022, <https://www.amnesty.org/en/documents/eur54/5214/2022/en/>

19 Amnesty International, Nigeria: "My heart is in pain" – Older people's experience of conflict, displacement, and detention in northeast Nigeria (Index: AFR 44/3376/2020), 8 December 2020, <https://www.amnesty.org/en/documents/af44/3376/2020/en/>, pp.35-44.

20 Amnesty International, Last to flee: Older people's experience of war crimes and displacement in the Nagorno-Karabakh conflict (Index: EUR 54/5214/2022), 17 May 2022, <https://www.amnesty.org/en/documents/eur54/5214/2022/en/>, pp. 6, 22-25.

21 See Fourth Geneva Convention, Articles 17, 27, 85 and 119; International Committee for the Red Cross, Customary International Humanitarian Law, Vol. 1: Rules, (ICRC, Customary IHL) Rule 138. The Elderly, Disabled and Infirm, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule138

report by UNICEF,²² the number of care homes for older people has increased over the same period in every European Union country for which there was data.²³

In Ukraine, for example, Amnesty International found that many older people do not have access to disability-related supports and services in their communities. This situation has been exacerbated by Russia's full-scale invasion in February 2022, as social workers have struggled to maintain services in conflict-affected areas where disproportionate numbers of older people have stayed behind.²⁴ But barriers to long-term care for older people in Ukraine predated the war. Many older people told Amnesty International that they found the process for applying for official disability status – which under Ukrainian law entitles them to assistive devices, rehabilitative care, and other supports – difficult if not impossible to navigate. This, combined with the highly medicalized approach to disability in Ukraine, has led to the exclusion of many older people with disabilities from such benefits.²⁵

By contrast, Ukrainian law facilitates the placement of older people in institutions. In general, people must have a disability in order to be placed in institutions, but under Ukrainian law an exception is made for older people (defined as anyone within 1.5 years of pension age), who can be admitted to an institution without having a registered disability.²⁶ Given the many barriers older people face when attempting to access disability-related services in their communities, institutionalization therefore often becomes the default response to older people in need of support.

Placement of older people with disabilities into institutions can lead to their neglect and abuse. In Ukraine, an independent monitoring body found that 99% of people in institutions who have limited mobility are never taken outside.²⁷ In visits to institutions, Amnesty International confirmed this trend of neglect, and documented several incidents in which residents said they had experienced or witnessed physical abuse or other ill-treatment.²⁸

Amnesty International has documented violations of the rights to life, health, and non-discrimination in long-term care facilities in the United Kingdom, Belgium, Italy and Spain during the Covid-19 pandemic in 2020. (For more information, see “Right to Health and Access to Health Services” below.)

Currently there is no explicit standard on long-term care in older age in international human rights law, nor a specific right to care and support for independent living in older age. Although Article 19 of the CRPD provides the right to independent living, our reporting shows that older people are often unable to exercise this right on an equal basis with younger people with disabilities, emphasizing the need for further codification specific to them.²⁹

A UN convention on the rights of older persons would recognize their rights to care and support services that promote their independent living. It would clarify States' obligations to ensure high-quality, affordable care and support services to older people on an equal basis with others, and place at its core autonomy and right to dignified and independent living.

E) PROTECTION AND SOCIAL SECURITY

Article 9 of the ICESCR recognizes the right to social security.³⁰ This right includes the right to access and maintain benefits to secure protection from a range of adverse circumstances, including a lack of work-related income, unaffordable access to health care and insufficient family support.³¹ The UN Committee on Economic, Social and Cultural Rights, which is charged with providing an authoritative interpretation of the rights contained in the Covenant, has said that state parties should provide pensions within the limits of

²² UNICEF, Europe and Central Asia, 15 years of De-Institutionalization Reforms in Europe and Central Asia. Key results achieved for children and remaining challenges, 2017, https://www.unicef.org/eca/sites/unicef.org/eca/files/2018-11/Key%20Results%20in%20Deinstitutionalization%20in%20Europe%20and%20Central%20Asia_0.pdf

²³ Eurofound, Care homes for older Europeans: Public, for-profit and non-profit providers, 28 November 2017, https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1723en.pdf

²⁴ Amnesty International, “They Live in the Dark”: Older people's isolation and inadequate access to housing amid Russia's invasion of Ukraine, (forthcoming on 1 December 2023).

²⁵ Ibid.

²⁶ Pension age is between 60 and 65 years old depending on the amount of time a person worked in the formal economy. See: Ukraine, Cabinet of Ministers Decree No. 772, Article 13.

²⁷ National Preventive Mechanism of Ukraine, “Спеціальна доповідь Уповноваженого Верховної Ради України з Прав Людини: Стан Реалізації Національного Превентивного Механізму у 2020 Році” (previously cited), p. 84.

²⁸ Amnesty International, “I Used To Have A Home”: Older People's Experience of War, Displacement, and Access to Housing in Ukraine (Index: EUR 50/6250/2022), 6 December 2022, <https://www.amnesty.org/en/documents/eur50/6250/2022/en/>, pp. 60-65.

²⁹ Amnesty International, “They Live in the Dark”: Older people's isolation and inadequate access to housing amid Russia's invasion of Ukraine, (forthcoming on 1 December 2023).

³⁰ ICESCR, Article 9.

³¹ CESCR, General Comment 19: The right to social security (Art. 9), 4 February 2008, UN Doc. E/C.12/GC/19, paras. 2 and 15.

available resources to all older persons of prescribed retirement age, including those who have not completed a qualifying period of contribution.³²

However, many countries around the world do not provide universal pensions to older people. According to HelpAge International, only 20% of older people in low-income countries receive a pension;³³ these countries include places where Amnesty International has undertaken research on older people.³⁴

In other countries where Amnesty International has worked, older people have access to universal pensions, but these payments are woefully inadequate. In Ukraine, for example, 80% of older people receive pensions that put them below the real poverty line as calculated by the Ministry of Social Policy.³⁵ This has had particularly serious consequences since Russia's full-scale invasion of Ukraine in 2022, as many older people have been displaced and lost access to their homes, and rapid inflation has made rental housing extremely unaffordable.³⁶ Because older people live on such low pensions, they are often unable to exercise their right to an adequate standard of living, including adequate housing, in displacement.

According to the CESCR, cash or other benefits "must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care".³⁷ The European Social Charter (ESC), which Ukraine ratified in 2006, guarantees the rights of older people to social protection.³⁸ Despite this, an October 2020 assessment of Ukraine commissioned by the Council of Europe found that "under Article 23, the right to adequate resources, which primarily encompasses the amount of pensions and other benefits, has been the object of criticism by the ESCR [European Committee of Social Rights] since the accession of Ukraine to the ESC".³⁹

The entrenched poverty experienced by older people in diverse countries around the world, even when they do have access to universal pensions, underscores the importance of addressing this issue in international law. Amnesty International shares the view of HelpAge International that the right to social protection and social security in older age needs to be clearly set out in a new UN convention on the rights of older persons.⁴⁰ This would build on existing human rights standards and apply them to the particular context of older age. It would clarify States' obligations to ensure older persons' access to social protection including social security that is accessible, available, adequate and acceptable, on an equal basis with others. It would also protect older persons' autonomy and independence in all related matters, as well as their access to remedies and redress.

J) ECONOMIC SECURITY

Older people in situations of risk face heightened economic precarity. Particularly when displaced, including by armed conflict or other humanitarian emergencies, older people lose access to jobs, farmland, or livestock and often live in poverty as a result. They struggle to access employment in displacement, often because of explicit or implicit discrimination against them.

In northern Myanmar, where more than 105,000 people from ethnic minorities lived in IDP camps at the time Amnesty International undertook research in 2018-2019, older people said they found it difficult to make a living. For example, one 65-year-old woman told Amnesty International that since being displaced to a camp, she had lost her livelihood working on people's farms or collecting and selling corn; when she approached employers for work, she said, "They said I'm too old, that I won't be able to walk that far to [the paddy fields]...No one invites us older people [to work]."⁴¹ Some humanitarian programmes in camps for displaced persons, particularly those aimed at livelihood support, appeared to discriminate against, or at least under-include, older people.⁴²

32 CESCR, General Comment 6: The Economic, Social, and Cultural Rights of Older Persons, 8 December 1995, UN Doc. E/1996/22, para. 30.

33 HelpAge International, "What we Do: Income Security", <https://www.helpage.org/what-we-do/income-security/>

34 Amnesty International has reported on older persons' rights in Nigeria, where according to HelpAge International the vast majority of older people do not receive a pension (See: <http://www.pension-watch.net/country-fact-file/nigeria>).

35 EPravda, "80% пенсіонерів в Україні живуть за межею монетарної бідності – омбудсмен", 12 October 2022, <https://www.epravda.com.ua/news/2020/10/12/666153/>

36 State Statistics Service of Ukraine, Consumer price indices for goods and services in 2023 (to corresponding month of previous year), <https://ukrstat.gov.ua/> (accessed 2 August 2023).

37 CESCR, General Comment 19: The right to social security (Art. 9) (previously cited), para. 22.

38 European Social Charter (Revised), Article 23.

39 Council of Europe, Assessment of Ukraine's policy and legal framework related to the rights of older people to social protection in the light of Article 23 of the Revised European Social Charter (cited previously), p. 36.

40 HelpAge International, Responses to the OEWSA questionnaire: "Identification of possible gaps in the protection of the human rights of older persons and how best to address them", October 2023, https://social.un.org/ageing-working-group/documents/Intersessional%20Events/NGOs/HelpAge_OEWSA%20questionnaire.pdf

41 Amnesty International, Myanmar: "Fleeing my whole life": Older people's experience of conflict and displacement in Myanmar (Index: ASA 16/0446/2019), June 18, 2019, <https://www.amnesty.org/en/documents/asa16/0446/2019/en/>, p. 65.

42 Ibid.

Similarly, in Azerbaijan, many of the older people who had been displaced in the 1990s by armed conflict with Armenia struggled to earn a living because their primary skills were in agriculture, and they were unable to use these in the urban, state-built developments where they lived. When they did find formal employment, they were often pushed out of the workplace by a certain age: one 71-year-old man said that human resources at the company where he worked said he had reached the 'age limit' and had to retire. He said: "If I were in my village, I could earn a lot more money, I could produce my own meat, eggs, crops... Life here [in displacement] is a waste."⁴³

In Northeast Nigeria, Boko Haram at times murdered those, including older men, who refused to hand over a portion of their harvest, livestock, and other property, including money. Fighters looted or "taxed" people repeatedly; relinquishing a significant part of their harvest and livestock made it particularly difficult for older people, many of whom were already food insecure, to access enough food to survive.⁴⁴ In displacement, older men and women suffered even more, as losing access to their farms and livestock meant that they often went from being independent providers to being invisible and dependent on assistance. Older people interviewed by Amnesty International in government-controlled displacement camps consistently described inadequate access to food.⁴⁵ They said they had limited access to livelihoods, even compared to other parts of the displaced population, making them heavily dependent on outside support. Many displaced older people faced greater barriers and resistance to getting problems with their humanitarian assistance resolved, for example when people were inexplicably removed from registration lists for food distribution. Many described eating one meal a day and having to beg to survive.⁴⁶

Under international law, older people have the same right as others to an adequate standard of living including rights to adequate food, clothing and housing.⁴⁷ However, our reporting demonstrates how ageism and discrimination affect their ability to exercise these rights. A comprehensive human rights treaty is necessary to ensure that older people can truly enjoy these rights on an equal basis with others. While it has not been a primary focus of our research, it is clear that age-based discrimination in the workplace, including with formal policies such as mandatory retirement laws, is a problem that many older people face around the world. This issue has not been sufficiently addressed in international law, leaving older people extremely vulnerable to this form of discrimination in particular.⁴⁸

K) RIGHT TO HEALTH AND ACCESS TO HEALTH SERVICES

Amnesty International has documented violations of older persons' right to health in several countries. In the Rohingya refugee camps in Bangladesh, older people often did not have access to healthcare services, which were particularly hard to access for those with limited mobility.⁴⁹ Older people in these camps often did not have access to adequate food and water or sanitation to ensure that their right to health was protected. When the Covid-19 pandemic hit in 2020, many older people in the refugee camps also did not have access to relevant information, including about preventative measures, as it was not disseminated in accessible ways.⁵⁰

Amnesty International has also reported on the situation in long-term care facilities in the United Kingdom, Belgium, Italy and Spain during the Covid-19 pandemic, finding that government policies in these countries resulted in violations of the right to life, to health, and to non-discrimination of older people living in these facilities.

In the UK, the government undertook a series of decisions that marked a flagrant disregard for the life of older people living in care homes, including: mass discharges from hospitals into care homes of patients infected or possibly infected with Covid-19; failure to ensure adequate testing and use of protective personal equipment (PPE) amongst care home workers; imposition of blanket Do Not Attempt Resuscitation (DNAR) orders on residents of many care homes without their consent or the consent of their family members; and restrictions of residents' access to hospital and other healthcare services.⁵¹

43 Amnesty International, Azerbaijan: "Life in a box": Older people's experiences of displacement and prospects for return in Azerbaijan (Index: EUR 55/5215/2022), 7 May 2022, p. 24.

44 Amnesty International, Nigeria: "My heart is in pain" – Older people's experience of conflict, displacement, and detention in northeast Nigeria (Index: AFR 44/3376/2020), 8 December 2020, <https://www.amnesty.org/en/documents/afr44/3376/2020/en/>, pp. 26-27.

45 Ibid., pp. 53-56.

46 Ibid., pp. 50-53.

47 ICESCR Article 11.

48 Age Platform Europe, The right to work in old age: How the EU Employment Framework Directive still leaves older workers behind, March 2021, https://www.age-platform.eu/sites/default/files/The_right_to_work_in_old_age-AGE_Platform_Europe_June2021.pdf.

49 Amnesty International, Myanmar: "Fleeing my whole life": Older people's experience of conflict and displacement in Myanmar (Index: ASA 16/0446/2019), June 18, 2019, <https://www.amnesty.org/en/documents/asa16/0446/2019/en/>, pp. 44-51.

50 Amnesty International, "Bangladesh: Covid-19 response flaws put older Rohingya refugees in imminent danger", 6 April 2020,

<https://www.amnesty.org/en/latest/news/2020/04/bangladesh-covid-19-response-flaws-put-older-rohingya-refugees-in-imminent-danger/>
51 Amnesty International, United Kingdom: As if expendable: The UK government's failure to protect older people in care homes during the COVID-19 pandemic, 4 October 2020, <https://www.amnesty.org/en/documents/EUR45/3152/2020/en/>

In Italy, in three regions in particular (Emilia Romagna, Lombardy and Veneto), the government's failure to effectively manage the crisis within care homes facilities caused thousands of deaths and undermined older people's rights to health, life and non-discrimination. The cascade of shortcomings included: poorly timed restrictions on care home visits; inadequate or delayed supply of PPE; delays in testing older residents and staff; discharge of infected patients from hospitals into care homes without ensuring proper protective measures; and advising against hospitalization of care home residents displaying Covid-19 symptoms, denying them crucial medical attention and further exacerbating the situation.⁵²

In Belgium, in particular during the first phase of the pandemic, there were similar challenges. Care homes had access to far less PPE and resources than hospitals. This, together with restrictions of care home residents' access to hospitals, a failure to ensure adequate testing, structural staff shortages, and insufficient training for care home staff to deal with infectious disease management, negatively affected the residents' rights to life and health, and contributed to an increase of the number of deaths in care homes that could have been avoided.⁵³

Similarly, in Spain (particularly in Catalonia and Madrid), our reporting highlighted the severe inadequacies in protecting older residents' rights, in particular the right to health and right to life. This was particularly linked to austerity measures and underfunding in Spain's health care system. Regulations and practice in Madrid and Catalonia recommended treating older people in care homes instead of transferring them to hospitals, which was not just discriminatory but ultimately had fatal consequences in many cases because there was inadequate equipment or medical staff. The virus spread rapidly due to lack of protection for care workers, impacting care for older residents; and there were instances where care home residents couldn't access adequate treatment for Covid-19 or other illnesses in hospitals or care homes, undermining their rights.⁵⁴

In several countries where Amnesty International has worked, older people are unable to exercise their rights to health due to their relative poverty and unaffordability of medical services. For example, in Ukraine, many older people told Amnesty International that they postponed healthcare spending, including for vital medications and hip and knee replacements or cataract operations, because they could not afford them.⁵⁵ In Ukraine, where 80% of older people receive pensions that are below the real poverty line, the World Health Organization (WHO) has found that older people make up more than half of those experiencing catastrophic health spending, or spending greater than 40% of their capacity on healthcare.⁵⁶

52 Amnesty International and Amnesty International-Italy, 17 November 2020, *Abbandonati: Violazione del diritto alla vita, alla salute e alla non discriminazione delle persone anziane nelle strutture socio-sanitarie e socio-assistenziali durante la pandemia in Italia* (Index Number: EUR 30/5503/2020), <https://www.amnesty.org/en/documents/eur30/5503/2020/it/>

53 Amnesty International Belgium and Amnesty International, *Les maisons de repos dans l'angle mort : Les droits humains des personnes âgées pendant la pandémie de COVID-19 en Belgique* (Index Number: EUR 14/5504/2020), November 2020, <https://www.amnesty.be/campagne/discrimination/droits-agees-pandemie-covid/maison-repos-covid19>

54 Amnesty International-Spain and Amnesty International, *Abandonadas a su suerte: La desprotección y discriminación de las personas mayores en residencias durante la pandemia COVID-19 en España* (Index number: EUR 41/5502/2020), 3 December 2020, <https://www.amnesty.org/en/documents/eur41/5502/2020/es/>

55 Amnesty International, "They Live in the Dark": Older people's isolation and inadequate access to housing amid Russia's invasion of Ukraine, (forthcoming on 1 December 2023).

56 World Health Organization (WHO), *Can people afford to pay for health care?: New evidence on financial protection in Ukraine 2023*, 15 June 2023, <https://www.who.int/europe/publications/i/item/9789289060165>, pp. 44-46.

OPTIONS ON HOW BEST TO ADDRESS THE GAPS

1. *Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons. (500 words)*

Because Amnesty International's work on older people is only five years old, we have had only a few opportunities to engage with international and regional human rights mechanisms around this issue. Most of the countries for which we have research on older persons have not had their Universal Periodic Reviews since we conducted research. Amnesty International engaged with the UPR process for Belgium in 2021, highlighting our work on violations of the rights of older people in care homes during the Covid-19 pandemic, and called for the Belgian government to respect and fulfil care home residents' rights to health, life and non-discrimination, and to ensure a comprehensive and independent review of the government's response to the Covid-19 pandemic and provide adequate and accessible remedy for any human rights violations that resulted from it.⁵⁷ In our engagement with the UPR on Myanmar in 2020, we highlighted the particular risks older people faced in armed conflicts there, particularly with regards to their rights to healthcare and livelihood.⁵⁸

We have engaged with the CRPD Committee, most recently on a submission on Article 11 on situations of risk and humanitarian emergencies, which included an intersectional focus on older people.⁵⁹ We have engaged regularly with the Special Rapporteur on the rights of persons with disabilities and with the Independent Expert on the enjoyment of all human rights by older persons through a number of channels, including by sharing our research findings directly with them and by addressing the Human Rights Council.⁶⁰

2. *Have those engagement resulted in positive impact in strengthening the protection of the human rights of older persons? Please elaborate. (500 words)*

While our engagement on the rights of older persons is fairly recent and therefore limited in scope, we have been disappointed in general by the low frequency with which existing mechanisms reference the rights of older persons. We believe that the lack of a comprehensive binding instrument on the rights of older persons increases the risk that member states, treaty bodies, and civil society organizations will continue to lack the necessary capacity, legal framework, and specialized knowledge to address this group. The Office of the High Commissioner on Human Rights, in a January 2022 report, found that there does not appear to have been a significant increase in engagement by human rights mechanisms on the rights of older persons, even in the wake of the Covid-19 pandemic.⁶¹ According to OHCHR, the "nature, level and intensity of this engagement falls short of providing a comprehensive, coherent and sustained engagement with the human rights of older persons".⁶²

57 <https://www.amnesty.org/en/documents/eur14/3400/2020/en/>

58 <https://www.amnesty.org/en/documents/asa16/2731/2020/en/>

59 Amnesty International, Persons with disabilities in situations of risk and humanitarian emergencies: Submission to the Committee on the Rights of Persons with Disabilities on Article 11: Day of general discussion 2023 (IOR 40/6454/2023), 13 March 2023, <https://www.amnesty.org/en/documents/ior40/6454/2023/en/>

60 See for example, Oral Joint Statement during the Interactive Dialogue with the Independent Expert on the enjoyment of all human rights by older persons, at the 54th session of the HRC (IOR 40/7193/2023, 15 September 2023, <https://www.amnesty.org/en/documents/ior40/7193/2023/en/> and Human Rights Council – 47th session: Panel discussion on the adverse impact of climate change on the full and effective enjoyment of human rights by older persons (IOR 40/4542/2021), 30 June 2021, <https://www.amnesty.org/en/documents/ior40/4542/2021/en/>

61 OHCHR, Update to the 2012 analytical outcome study, 2021; Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons, Report of the United Nations High Commissioner for Human Rights, A/HRC/49/70, 28 January 2022 para. 30.

62 OHCHR, Update to the 2012 analytical outcome study, 2021; Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons, Report of the United Nations High Commissioner for Human Rights, A/HRC/49/70, 28 January 2022, para. 29.

3. *What other options can be considered to strengthen the protection of older persons? Please elaborate. (500 words)*

General human rights treaties apply to everyone universally, but specific conventions can be necessary to further develop how rights apply to specific groups or situations. This has been demonstrated by the elaboration of specific treaties on, for example, the rights of women, children, people with disabilities and migrant workers during the last four decades. This should also be the case for older people and their rights. Although better implementation of existing law and standards by existing mechanisms is needed, better implementation in itself is insufficient. The general international human rights framework rarely mentions older people or ageing explicitly, and contains important conceptual shortcomings. It is often lacking an understanding of the social construction of age, ageism and the impact of ageing on human rights. These important limitations, deficiencies and gaps in the international human rights framework can be best addressed by a specific convention for the rights of older people.⁶³

A dedicated convention is the most effective instrument to combat ageism and age discrimination. Ageism is an important root cause of human rights violations and abuses against older people, yet existing treaties do not contain specific and elaborated positive obligations for states to combat ageist stereotypes and prejudice, and protection against age discrimination in international law is inadequate.⁶⁴ There is a need for a specific convention to combat ageism and age discrimination, similar to other conventions that identify and address sexism, ableism and racism through a human rights framework.⁶⁵

A convention is also the best instrument to address other limitations, deficiencies and gaps identified above and in many publications by OHCHR, the Independent Expert on the human rights of older people and NGOs, by clearly articulating rights and detailing how these rights should be implemented in the specific context of ageing.

Furthermore, a convention has unique added value:

- Symbolic value – A convention has important symbolic value and confirms the importance the international community attaches to older people and their rights.
- Visibility – A convention would increase visibility of older people's human rights, and of the violations of their rights.
- Paradigm shift – A convention can change the paradigm away from medical and charity-based approaches towards a human rights based approach of ageing. The CRPD and the CRC are good examples of how a specific convention can radically change the way we think about the human rights of specific groups. A similar paradigm shift is needed for the human rights of older persons.
- Oversight – A convention and the mechanisms it should set up to ensure its implementation would significantly improve oversight and reporting through regular reporting obligations for State Parties. And importantly, it would provide older people and their organizations with a clear point of contact for reporting and complaints.
- Participation – A convention would give older people and their organizations tools to enforce their rights, and empower them to participate actively in the protection and enforcement of their rights on national and international levels.
- Structural change – A convention encourages states to review national laws and practices, and leads to fundamental, structural and coherent change.
- Coherence – A convention can help to remedy the fragmented and dispersed nature of existing protections.

63 OHCHR, Update to the 2012 analytical outcome study, 2021; Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons, Report of the United Nations High Commissioner for Human Rights, A/HRC/49/70, 28 January 2022, para. 51-53; Several reports by the Independent Expert on the human rights of older people.

64 See above, Equality and non-discrimination.

65 Enshrined in the UN Convention on the elimination of all forms of discrimination against women, the UN Convention on the rights of people with disabilities, and the UN Convention on the elimination of all forms of racial discrimination.

4. *If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)*

Older people and their rights are largely absent from general international human rights treaties, and the drafters of these treaties did not consider the specific challenges of human rights in older age. As a consequence, there are widespread and systemic limitations, deficiencies and gaps relating to ageing and older people in the international human rights framework. These limitations, deficiencies and gaps have been analysed in detail in the context of the proceedings of the Open-Ended Working Group on Ageing, the reports of the Independent Expert on the human rights of older people, and the OHCHR Analytical Outcome Studies. As set out above, Amnesty International research also shows how ageism, the lack of effective human rights protections, and the relative invisibility of older people in human rights and humanitarian responses exacerbate human rights violations and abuses against older people.

Many human rights instruments are relevant for older people's rights, but the existing international framework offers fragmented and inconsistent protection, suffers from important conceptual limitations and blind spots, and does not get to the underlying issues of ageism and invisibility.⁶⁶ That is why a dedicated convention is needed.

⁶⁶ See e.g. "The rights of older persons tomorrow", Remarks by Gerard Quinn, Special Rapporteur on the rights of persons with disabilities, on the issue of a proposed international treaty on the rights of older persons, 22 February 2022.

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