WHY WE NEED A UN CONVENTION ON THE RIGHTS OF OLDER PERSONS

Amnesty International is campaigning for a UN convention on the rights of older persons. Human rights are protected through international legal treaties (often called conventions or covenants), which states become a party to, committing themselves to certain obligations. There are existing conventions dedicated to protecting and defining the rights of several at-risk groups, including children, women, people with disabilities, migrant workers and racial and ethnic minorities. Older people, however, are not protected by a specific convention and therefore can face discrimination that may not be explicitly prohibited by existing international law.

Amnesty International believes that a convention on the rights of older persons would improve the understanding of older people's rights and articulate a clear set of obligations on how to protect older persons at the national level, including the obligation to address age discrimination and situations of abuse and neglect we commonly face in older age. Here we highlight what benefits a convention would provide and how it would address key gaps in the protection of older people's rights. As the number of older people continues to rise across the world, the imperative to properly recognize and protect our human rights in older age is greater than ever.

WHAT A UN CONVENTION WOULD PROVIDE

A UN convention on the rights of older persons would:

1. ***Clearly articulate and define rights relevant to older people and older age***
   A UN convention would both clearly define how rights in existing conventions apply in older age and also articulate some new rights that are specific to the experiences of older people and are missing from existing conventions. As is the case with any new human rights treaty, it would make clear that it will not diminish but only enhance and elaborate upon existing rights.

2. ***Provide countries with a legal framework, recommendations and guidance to review and develop policies and national legislation***
   Many countries do not have adequate legislation and policies that protect older people from discrimination, abuse or neglect. A convention would encourage countries to review and amend existing national laws, policies and practices to bring them into line with its provisions and standards, which in turn would lead to concrete improvements in many older people's lives.

3. *Create monitoring and reporting mechanisms to prevent and address rights violations and abuses in older age*

All international human rights treaties come with monitoring and reporting mechanisms, and a convention on the rights of older persons would be no different. The expert monitoring body would clarify and advise on legal obligations whilst providing consistent and rigorous scrutiny of and attention to violations of the rights of older people by those states who ratify the treaty, and more broadly. This would also require countries to collect and monitor data that is disaggregated by age so that policies and practices properly reflect older people's experiences and situations.

A new convention would therefore contribute to addressing the systematic and ageist exclusion and marginalization of older people, who have largely been ignored even within the human rights system, whilst strengthening the legitimacy and inclusivity of the human rights system for all.

4. *Empower older people to stand up for their rights and demand change*

A convention would define who an older person is and what their rights are. In doing so, it would empower older people and organizations representing them to hold their governments to account for protecting their rights and better ensure their active and meaningful participation in policymaking.

5. *Represent a paradigm shift away from older people as simply needing medical care or charity to instead seeing them as rights holders*

For too long, older age has mainly been seen as a time when people should receive charity and support primarily for the medical issues they may face. A convention on the rights of older persons would articulate a rights-consistent approach to ageing, challenging perceptions and driving a societal change to recognize that older people are also holders of a full range of human rights. The Convention on the Rights of Persons with Disabilities (2008) drove a similar shift, reaffirming that people with disabilities must have full access to existing human rights (such as to have access to justice on an equal basis with others), while also expanding human rights in ways that are specific to people with disabilities, guaranteeing their right to live in the community, attend mainstream schools, and their rights to physically accessible infrastructure and accommodation.[1]

WHAT GAPS IN THE PROTECTION OF OLDER PEOPLE WOULD A CONVENTION ADDRESS?

While international human rights law applies equally to all, including older people, specific reference to age and the unique kinds of rights violations older people face are largely absent from existing human rights treaties. Consequently, there are significant gaps related to ageing and older people in the international human rights framework, a systemic failure to monitor and report on them under the existing legal framework and an absence of clearly set out obligations for states to actively prevent and eliminate discrimination experienced by older people.

1. *Discrimination purely based on older age is not explicitly prohibited by existing treaties*

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) all fail to specifically prohibit discrimination on the basis of age. Both the ICCPR and the ICESCR, for example, prohibit discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

While the Committee on Economic, Social and Cultural Rights (CESCR) has said that age-based discrimination is included under "other status"[2] and the CESCR General Comment 6 highlights some of the rights of older people,[3] the lack of explicit reference to age discrimination in the ICESCR itself has meant that rights in older age are not fully recognized or reported on. This is particularly important when it comes to areas where older people face widespread discrimination, such as the workplace or healthcare. Of the core human rights treaties, only the Migrant Workers Convention explicitly includes "age" among the prohibited grounds for discrimination.

Case study: Workplace discrimination
Workplace discrimination against people based on their age is routinely treated in national legislation and courts as less serious than other forms of discrimination.[4] Take the Petersen case at the European Court of Justice (2010),[5] in which the ECJ ruled that a 68-year-old dentist could be forced into retirement, accepting the argument that the skills of dentists declined with age and basing this assumption on "general experience", rather than on scientific studies, an individual assessment of the dentist in question, or other evidence.

2. Rights related to the unique experiences of older age are not protected by existing conventions, even when older people hold other protected identities

Existing conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CPRD) do not capture the unique experiences of older people, even older women, and older people with disabilities, and thus are unable to provide older people with full protection. Several of the many areas where older people face distinct violations of their rights that are not adequately delineated in other treaties include:

1. ***Their right to health:*** for example, many older people who live on fixed incomes on inadequate pensions, or do not receive a pension at all, often face unaffordable healthcare costs and therefore avoid treatment.[6] In addition, older people can face ageism from healthcare providers who may assume that fragility and diminished cognitive capacity are a normal part of ageing and thus older people are often not treated appropriately.[7]
2. ***Their right to be free from violence, abuse and neglect:*** some forms of abuse, such as physical abuse in care settings or emotional or financial abuse from close family members, are prevalent in older age but are not adequately addressed in existing law.
3. ***The right to equal treatment during health emergencies:*** during the Covid-19 pandemic, we saw many examples of older people being treated as unable or less able to make decisions about their own lives, purely because of assumptions based on their older age.
4. ***The digital divide:*** sometimes, older people cannot access their rights due to digital exclusion, for example when social protection benefits are offered through online applications that older people are often less likely to have access to or may find hard to navigate.

Therefore, we need a clearer articulation of rights that fully reflect our experiences in older age, including those related to employment, violence, abuse and neglect, long term and palliative care and economic security.

Case study: Older people with disabilities
Older people with disabilities are often denied their rights under the CRPD because their conditions are perceived as degenerative or as an inevitable part of ageing, and therefore not warranting support. In Ukraine, for example, we found that older people with disabilities were discouraged from applying for or misinformed about services and equipment available to them as persons with disabilities, and often went without such support as a result, violating their right to live independently in the community.[8]

Case study: Older people during Covid-19

During our research on care homes in the UK, we found that medical practices put blanket orders in place not to admit older care home residents to hospitals in the case of Covid-19 and encouraged care homes to put blanket do not attempt resuscitation (DNAR) orders in place for older residents with Covid-19.[9] A DNAR, which determines whether a medical team will attempt CPR on a patient if they are in critical condition or not, is fundamental to the wishes of a patient and their families and must be made with their informed consent. The failure to do so underscores how older people face severe abuse and discrimination in accessing healthcare, and how governments around the world made policy decisions that led to countless unnecessary deaths during the Covid-19 pandemic.

3. There are no specific positive obligations on states to combat age discrimination or negative stereotypes of older age (ageism) in existing treaties

When states ratify other conventions, such as the CRPD or CEDAW, they are required to identify and recognize forms of discrimination faced by those groups and to undertake measures to counter them. Without a convention on the rights of older persons, there is no equivalent explicit positive legal obligation on countries to challenge the negative stereotypes about older age that often drive the discrimination, abuse and neglect that older people face. Conventions also require states to review relevant existing policies and legislation to identify whether they are discriminatory. However, without a convention for the rights of older people, no such review into existing legislation from the perspective of discrimination based on older age is likely to be undertaken in the absence of a specific duty to do so.

Case study: National legislation

A WHO report from 2014, based on a survey of 133 countries, found that only 40% of countries had laws against the abuse of older people in institutions, and only 59% had laws against the abuse of older people period.[10] A recent study by HelpAge International of age discrimination laws across 12 different countries found them universally lacking: in some countries, age discrimination provisions are only in place for specific spheres, such as employment; in others, they protect only against discrimination in legislation, but not against discrimination by private or public actors; in many countries, age discrimination laws that do exist have no framework or means of enforcement.[11]

4. Data collected by national statistics offices and humanitarian agencies is often not disaggregated according to age, gender, disability and other characteristics

By using indicators that fail to recognize lived experiences of older age and general data that is not disaggregated and analysed by age (as well as other identities and characteristics), governments and humanitarian agencies often fail to understand how and at what scale older people are impacted and what action and resources are necessary to protect their rights. The failure to adequately collect, disaggregate and analyse data by gender and disability likewise means that intersections between age, gender and disability are often overlooked. A convention would require states to collect such data.

5. Older people are disproportionately impacted in times of crisis and conflict, including by climate disasters, and do not receive adequate attention in humanitarian responses

In armed conflicts, older people are often the last to flee. They may fear losing their homes or their land, which can be their most valuable asset. Sometimes they have physical, intellectual, or other disabilities which make it more difficult to flee or to access information about evacuations. Other times, they stay simply because they do not know what kind of humanitarian or other support awaits them in

displacement. They die and are injured at disproportionate rates as a result, a trend we have found in Ukraine,[12] Nagorno-Karabakh,[13] and Myanmar.[14]

In the UN system and in development and humanitarian organizations, there are often gender advisors, child protection advisors and sometimes disability advisors – but there are rarely focal points on older people, or a mainstreamed understanding of the issues older people face. Humanitarian responses often exclude older people through poor accessibility of facilities, services and information – which is often digital only and excludes older people without internet access.

A convention would specify states' obligations to address the particular needs of older persons in situations of armed conflict and other humanitarian emergencies, as it has through Article 11 of the Convention on the Rights of Persons with Disabilities. And it would raise awareness among UN agencies and other actors involved in humanitarian response about the need to adapt their services to better protect the rights of older persons.

Case study: Myanmar and Bangladesh

Amnesty International's research on older Rohingya men and women's experiences of conflict in Myanmar showed that they were disproportionately impacted by violence, compared to other age groups.[15] Soldiers shot and killed older people who were fleeing and, as they systematically burned down Rohingya villages, killed many older people, particularly those with limited mobility, who had been unable to leave their homes. A survey by Médecins Sans Frontières (MSF) of Rohingya refugees in Bangladesh showed that people over 50 years old were the most likely to be killed during the Myanmar military's assault on their villages in 2017: an estimated 5.47% of Rohingya population age 50 and over were killed during the first month of the Myanmar military's operation, versus 1.95% of Rohingya population between 5 and 49 years old.[16]

Case study: north-east Nigeria

In north-east Nigeria, older men detained for their perceived affiliation with Boko Haram, often based solely on having fled areas under Boko Haram control, died in large number, and at disproportionately high rates, in military detention facilities where the conditions were grossly inhumane.[17] We also found that older people fleeing conflict often struggled to access food and medication in displacement camps run by the Nigerian government. Authorities in these camps failed to prioritize or even ensure meaningful inclusion of older people, particularly older women, which often raised challenges in accessing food assistance, forcing many to go hungry. In addition, health services in the camps catered to younger people, prioritizing emergency care or malaria. Treatment for chronic health conditions that older people experience, such as diabetes or heart conditions, was non-existent. One 70-year-old woman said: "When they refer us to the hospital, we stay home. So many of my friends, other older people, have died because of this."

[1] Frédéric Mégret, "The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?", May 2008, Human Rights Quarterly, Volume 30, Number 2, pp. 494-516

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[3] CESCR, *General Comment No. 6 The economic, social and cultural rights of older persons*, 1995, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FGEC%2F6429&Lang=en

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[11] HelpAge International, *Advancing equality for older people*, 2022, https://www.helpage.org/silo/files/age-equality-report.pdf

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[13] Amnesty International, *Azerbaijan: "Life in a box": Older people's experiences of displacement and prospects for return in Azerbaijan* (Index: EUR 55/5215/2022), 2022, https://www.amnesty.org/en/documents/eur55/5215/2022/en/

[14] Amnesty International, *Myanmar: "Fleeing My Whole Life": Older People's Experience of Conflict and Displacement in Myanmar* (Index: ASA 16/0446/2019*)*, 2019, https://www.amnesty.org/en/documents/asa16/0446/2019/en/

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