



Safety of Older Persons: Neglect, Abuse and Violence against Older Persons

International Conference on the Occasion
of International Day of Older Persons
„Human Rights of Older Persons in the Czech Republic“
1 October 2019

*Office of the UN Independent Expert on the enjoyment of
all human rights by older persons*

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I. Background



Independent Expert on Older Persons



Ms. Rosa Kornfeld-Matte (Chile) was appointed in May 2014 for a period of 3 years and re-conducted in Sept. 2016 for a 2nd term

- Previously served as the National Director of the Chilean National Service of Ageing where she designed and implemented the National Policy of Ageing.
- Has a long career as an academic and is the founder of the programme for older persons at the Pontifical Catholic University of Chile.

What is an Independent Expert?

- Part of the **system of Special Procedures** consisting of now 44 thematic and 12 country mandates
- **Independent, fact-finding, expert mechanism** of the Human Rights Council (HRC) to address specific country situations or thematic issues in all parts of the world
- Mandate holders **serve in their personal capacity**, not staff members of the UN, independent and unpaid
- Thematic mandates are renewed every three years, country mandates annually
- **What do they do:** Country visits; Communications; Annual thematic reports to the HRC followed by an interactive dialogue; Awareness-raising, media statements etc.
- OHCHR provides mandate holders with personnel, logistical and research assistance

Legislative History

- ✓ **Established** by HRC resolution **24/20** of 27 Sept. 2013
- ✓ **Institutionalized** by HRC resolution **33/5** in Sept. 2016
- ✓ **Extended** in September 2019 with a reporting mandate to the General Assembly

***Paradigm shift** from a predominant economic and development perspective to ageing to the imperative of a **human rights-based approach** that views older persons as subjects of law, rather than simply beneficiaries, with specific rights, the enjoyment of which has to be guaranteed by States.*

Mandate

of the Independent Expert on Older Persons

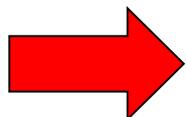
- **Assess the implementation of national, regional and international standards** with regard to older persons while identifying both **best practices and gaps**
- Report on **developments, challenges and protection gaps** in the realization of the rights of older persons,
- **Pay attention to specific groups:** older women, persons with disabilities, persons of African descent, individuals belonging to indigenous peoples, persons belonging to national or ethnic, religious and linguistic minorities, rural persons, persons living on the streets, and refugees

System Analysis - Main Findings

- “Comprehensive Report” requested HRC **res. 24/20**
- **Main conclusion reached:**
 - All issues raises a set of issues and **protection concerns** that deserves in-depth analysis
 - Need for **South-South cooperation** and **sharing of good practices** at the regional level to guide implementation
 - **MIPAA uneven progress** in implementation – still major gaps between policy and practice – not a human rights instrument just notions – mainly developmental perspective no comprehensive HROP
 - **HC of OHCHR in 2012:** concluded that **existing arrangements to protect the human rights of older persons are inadequate and that dedicated measures to strengthen the international protection regime are required**, such as a new dedicated international instrument and/or a new special procedure mandate (see E/2012/51, para. 66 + A/33/44 para. 124)

Thematic Priorities of the IE

- ✓ **Age discrimination** – e.g. stereotypes, negative attitudes also occur
- ✓ **Older Persons in emergency situations**
- ✓ **Participation in policymaking (programme planning)** – Humanitarian action often fails to recognize the vulnerabilities of older persons as their needs are not known
- ✓ **Access to resources and services** – Food- or cash-for-work programmes often involve heavy labour not suitable for older persons. Another issue is access to food and housing: e.g. during the 2008 post-election violence in Kenya, older persons faced difficulties queuing for long periods to receive food in their IDP camp.
- ✓ **Accessibility** - In Darfur in 2005 61% of older persons had limited mobility; of these, one-quarter could not move without a guide and 7% were housebound.
- ✓ **Care/right to health** – During the 2004 tsunami, emergency health centres did not have chronic disease medications; staff was not trained to diagnose or treat conditions affecting older persons.



Violence & elder abuse as explicit priority

Collection of best practices: **Country visits**

- The IE undertakes **2-3 country visits** per year
- Current focus: **collection of best practices**
- **2014-19 official visits:**
 - **Slovenia** (A/HRC/30/43/Add.1)
 - **Austria** (A/HRC/30/43/Add.2)
 - **Mauritius** (A/HRC/30/43/Add.3)
 - **Costa Rica** (A/HRC/30/44/Add.1)
 - **Singapore** (A/HRC/36/38/Add.1)
 - **Namibia** (A/HRC/36/48/Add.2)
 - **Georgia** (A/HRC/39/50/Add.1)
 - **Montenegro** (A/HRC/39/50/Add.2)
 - **Uruguay** (A/HRC/42/43/Add.1)
 - **Mozambique** (A/HRC/42/43/Add.2)
 - **China** - forthcoming



Global Standards & Tenets



Main Instruments

- **Universal Declaration of Human Rights**
- **United Nations Principles for Older Persons**
- **International Covenant on Civil and Political Rights**
- **International Covenant on Economic, Social and Cultural Rights**
- **Convention on the Elimination of All Forms of Discrimination against Women**
- **Convention on the Elimination of All Forms of Racial Discrimination**
- **International Convention on the Protection of the Rights of Migrant Workers and the Members of their Families**
- **Convention on the Rights of Persons with Disabilities**
- **ILO Convention no.102 concerning Social Security (Minimum Standards)**
- **ILO Convention no.128 concerning Invalidity, Old-Age and Survivors' Benefits**



General Comments and Recommendations by UN Treaty Bodies and ILO

- CEDAW, General Recommendation No. 27 on older women and protection of their human rights
- CESCR, General Comment No. 6 on the economic, social and cultural rights of older persons
- CESCR, General Comment No. 14 on the right to the highest attainable standard of health
- CESCR, General Comment No. 19 on the right to social security
- CESCR, General Comment No. 20 on non-discrimination in economic, social and cultural rights
- CESCR, General Comment No. 21 on the right of everyone to participate in cultural life
- CCPR, General Comment No. 18 on non discrimination
- CRPD, General Comment No.1 on Article 12: Equal recognition before the law
- CRPD, General Comment No.2 on Article 9: Accessibility
- ILO, National Floors for Social Protection Recommendation No.202
- ILO, Termination of Employment Recommendation No.166
- ILO, Older Workers Recommendation No.162
- ILO, Invalidity, Old-Age and Survivor's Benefits Recommendation No.131

UN Policy Instruments

- **Policy on Age, Gender, and Diversity, UNHCR/HCP/2018/1, 08 March 2018**
- **Working with Older Persons in Forced Displacement, NTK Guidance No. 5, UNHCR, 2013**
- **UNHCR Age, Gender and Diversity Policy: Working with people and communities for equality and protection, by United Nations High Commissioner for Refugees (UNHCR), 1 June 2011**
- **The Protection of Older Persons and Persons with Disabilities, 6 June 2007 (Executive Committee of the High Commissioner's Programme, Standing Committee at its 39th Meeting - EC/58/SC/CRP.14)**
- **Madrid International Plan of Action on Ageing, (2002)**
- **UNHCR's Policy on Older Refugees, 19 April 2000 (as endorsed at the 17th Meeting of the Standing Committee, 29 February - 2 March 2000), UNHCR Standing Committee**
- **Older Refugees: Looking Beyond the International Year of Older Persons, 7 February 2000, UNHCR Standing Committee (EC/50/SC/CRP.8)**
- **The Situation of Older Refugees, 14 August 1998, UNHCR Standing Committee**
- **Vienna International Plan of Action on Ageing, (1982)**

Regional Instruments

- **African Charter on Human and People's Rights**
- **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)**
- **American Convention on Human Rights**
- **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)**
- **Andean Charter for the Promotion and Protection of Human Rights**
- **Arab Charter on Human Rights**
- **ASEAN Human Rights Declaration**
- **Charter of Fundamental Rights of the European Union**
- **Inter-American Convention on the Protection of Human Rights of Older Persons**
- **African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa**

Specific Regional Instruments

- African Charter on Human and People's Rights
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)
- American Convention on Human Rights
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)
- Andean Charter for the Promotion and Protection of Human Rights
- Arab Charter on Human Rights
- ASEAN Human Rights Declaration
- Charter of Fundamental Rights of the European Union
- Inter-American Convention on the Protection of Human Rights of Older Persons
- African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa



United Nations Principles for Older Persons

All human rights apply to older persons and they should be able to fully enjoy their rights

Key document underpinning the work of the IE:

UN Principles for Older Persons

Adopted by General Assembly resolution 46/91 of 16 December 1991

•Centred on the following principles:

- **Independence** (e.g. access to adequate food, water, shelter, clothing and health care; work opportunities)
- **Participation** (e.g. participate in the formulation & implementation of policies)
- **Care**
- **Self-fulfilment** (e.g. access to the educational, cultural, spiritual resources)
- **Dignity** (e.g. be free of exploitation and physical or mental abuse.)



OHCHR

Inter-American Convention on Protecting the Human Rights Of Older Persons

Article 9

Right to safety and a life free of violence of any kind

- Legislative, administrative, & other measures to prevent, investigate, punish, and eradicate acts of violence against older persons, as well as those that would enable reparation for harm occasioned by such acts.
- Information in order to generate diagnostic assessments to develop prevention policies.
- Creation and strengthening of support services
- Inform, train and sensitize
- Effective complaint mechanisms

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa

Article 8

Protection from Abuse and Harmful Traditional Practices

1. Prohibit and criminalize harmful traditional practices targeted at Older Persons; and
2. Take all necessary measures to eliminate harmful traditional practices **including witchcraft accusations**, which affect the welfare, health, life and dignity of Older Persons, particularly Older women.

Article 9

Protection of Older Women

1. Ensure the protection of the rights of Older Women from violence, sexual abuse and discrimination based on gender;
2. Put in place legislation and other measures that guarantee protection of Older Women against abuses related to property and land rights;
3. Adopt appropriate legislation to protect the right of inheritance of Older Women.



Dedicated International Instrument

In 2012, High Commissioner Pillay concluded that

“... existing arrangements to protect the human rights of older persons are inadequate and that dedicated measures to strengthen the international protection regime are required, such as a new dedicated international instrument and/or a new special procedure mandate.”

➤ see E/2012/51, para. 66 + A/33/44 para. 124)

The Human Rights Imperative

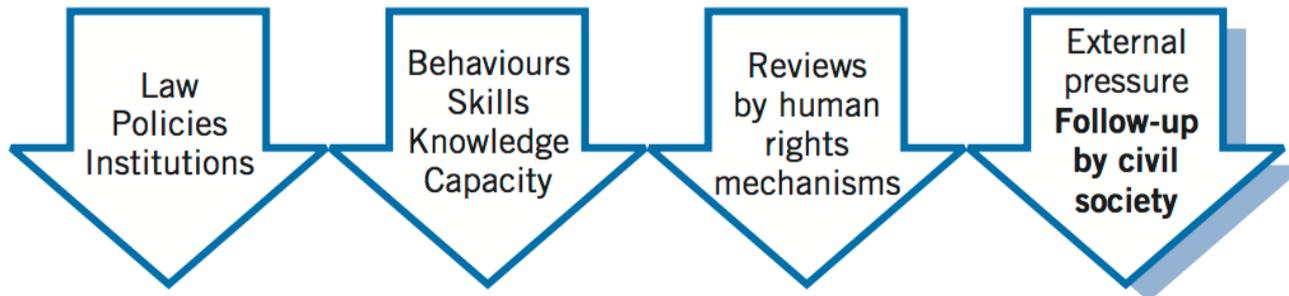
*“...a rights-based approach requires us to ask:
What is the content of the right?
Who are the human rights claim-holders?
Who are the corresponding duty-bearers?
Are claim-holders and duty-bearers able
to claim their rights and fulfil their responsibilities?
If not, how can we help them to do so?”*

*Mary Robinson
former UN High Commissioner for Human Rights
2nd Interagency Workshop on Implementing
a Rights-based Approach in the Context of UN Reform,
May 2003*



Translating rights into reality – failing without global rights standard

Rights and obligations
as established in international standards



Implementation



What is a Human Rights-based approach?

Difference between a right and a need. A right is an entitlement, entails an obligation on the part of the Government & others (!) and can be enforced. The HRBA asks: What rights are being neglected or violated in this situation? And not what are the needs/aspirations of the community?

Charity Approach	Needs Approach	Rights-Based Approach
Focus on input not outcome	Focus on input not outcome	Focus on process and outcome
Emphasizes increasing charity	Emphasizes meeting needs	Emphasizes realizing rights
Recognizes moral responsibility of rich towards poor	Recognizes needs as valid claims	Recognizes individual and group rights as claims toward legal and moral duty-bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestation of problems	Focuses on immediate causes of problems	Focuses on structural causes and their manifestations

Violence, maltreatment & abuse

- No universal definition of elder abuse, but takes **different forms** & occurs **frequently** in **all types of settings**.
- Includes discrimination in the public sphere, isolation, neglect, financial exploitation, psychological violence, withholding of basic needs, as well as physical attacks.
- **Global phenomenon**; often goes **unnoticed** & remains a **taboo** in many societies
- **Perpetrators** are frequently relatives, such as the older person's partner, spouse, children or children-in-law.
- **Lack of reliable information and data**
- **Reasons for underreporting**: privacy barrier in family relationships, the lack of awareness and the fear that older persons have of reprisals by the caregivers.



Sexual abuse and rape of older persons

- **Sexual abuse and rape of older persons: rarely discussed, but a reality** - Societal attitude: no acceptance of the concept of sexuality in older age, and therefore the idea that an older person can be the subject of sexual and gender-based violence.
- **Barriers to reporting and prevention:** Negative stereotypes, such as that older persons aren't sexual beings, their greater dependency on others, potential divided loyalty to staff members or residents.
- Forensic and other criminal evidence lost by mistaken compassion or shame.
- **Behavior of an older person**, even if they have confusion, will tell you that something is wrong. Even with dementia, people can often make their feelings known if you take the time to listen, observe and take notice.

Financial abuse of older persons

Financial abuse is rampant but largely invisible

- **Difficult to establish:** Even for experienced professional - to distinguish an unwise but legitimate financial transaction from an exploitative one that was the result of undue influence, duress, fraud, or a lack of informed consent. Older person may tacitly acknowledge it or feel that the perpetrator has some entitlement to his or her assets. Some older people have a desire to compensate those who provide them with care, affection, or attention.
- **Older person's best interests** have to be the overriding consideration when differentiating a transfer of assets made with consent from an abusive one.
- Financial abuse reflects a **pattern of behaviour** rather than a single event, and occurs over a period of time.



Way Forward

- **Promote a change in attitudes:** Being old should no longer be seen as pejorative but as positive.
- Therefore, **facilitate and actively encourage intergenerational dialogue.**

Change the burden discourse!

- Older persons as participative and productive individuals who continue to make a meaningful contribution to our societies, both for present and future generations.
- Collective prejudice against older people and public awareness influence the way in which abuse and violence is perceived, recognized and reported.



Global Action

- **Raise concerns with Human Rights Mechanisms**
 - **IE Older Persons** has a mandate to receive complaints and can receive information in relation to upcoming country visits
 - **Complaint mechanisms** of treaty bodies (e.g. OP CCPR, OP CESCR)
 - **Shadow reports** for Treaty Body country reviews
 - **Universal Periodic Review** submissions for NGOs compilation

- **Need for global coalition and concerted action**

Further information

- Special procedures website:
<http://www2.ohchr.org/english/bodies/chr/special/index.htm>
- Facts and Figures
http://www.ohchr.org/Documents/HRBodies/SP/A_HRC_28_41_en.doc
- Manual of the Special Procedures
http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf
- Chapter VI on SP of the OHCHR Handbook for NGOs
<http://www.ohchr.org/Documents/Publications/NgoHandbook/ngohandbook6.pdf>



THANK YOU!

