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Human rights of older persons during a pandemic

This **joint submission of the German Institute for Human Rights and the Commissioner for Human Rights of the Republic of Poland** (both A Status NHRIs) is based on discussion between the two institutions and experts from Adam Mickiewicz University in Poznań and the University of New South Wales in Sydney.

This input intends to advance the discussion on strengthening the human rights of older persons. As we know there is no comprehensive and coherent international human rights treaty with a special focus on older persons. Both institutions are of the firm view that a binding international instrument would provide a strong protection for the rights of older persons and that the experience thus far of the coronavirus pandemic and its impact on older persons adds urgency and a compelling element to the need for such an treaty.

We also take this opportunity to express our view that the 11th session of the OEWG-A should be held after the crisis as soon as possible, as the pandemic has made it quite visible that it is critical to continue our discussions about how to strengthen protection of the human rights of older persons.

Both institutions at the same time endorse the recent statement of the Independent Expert on the enjoyment of all human rights by older persons¹ and the statement of the group of UN experts on the issues combined with the on-going coronavirus crisis.²

Older persons in the time of pandemic – the role of the State

Older persons remain one of the most severely affected groups in this worldwide crisis. The challenges – such as social isolation of many senior citizens, loneliness, and ageist attitudes against older persons - are now even more visible and urgent. Not only do many older persons fear contracting the virus and limited access to health services but they also fear being a burden to their families and society and may lack trust in people they don't know. These and other issues in this

¹ “Unacceptable” – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic, Geneva, 27 March 2020; access: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E>.

² No exceptions with COVID-19: “Everyone has the right to life-saving interventions”, Geneva, 26 March 2020, access: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25746&LangID=E>.

time of physical distancing and isolation **require from States creative ways of reaching out to older persons in need of support.**³

Yet the rights and needs as well as the contributions of older persons are often overlooked in politics and practice. While **humanitarian principles require that assistance should be delivered impartially to those most in need without discrimination**, a “one-size fits-all” emergency response tends to overlook the specific, yet wide-ranging, vulnerabilities of older persons in emergency contexts – such as psychosocial support and the need of some older people for different forms of assistance necessities.

Human rights commitments as well as the “leaving no one behind” tenet of the Sustainable Development Goals and commitments to the Inclusion Charter all advocate for inclusive responses.⁴

At the same time, the coronavirus outbreak presents States with the challenge of coming up with quick solutions on how to provide adequate and accessible support, which focuses on the needs of older persons. **State public institutions can play a crucial role in building networks of social trust and should undertake systemic assessments of the needs of older persons followed by the design of measures to effective mitigation and prevention of abuse and neglect.**

States thus have an important role in connecting older persons with other stakeholders in order to support the creation of a holistic system of support and protection. Currently this is not happening sufficiently in most states and this affects many older persons. **The lessons learned from the on-going crisis must lead to building stable support systems, which will also function in the future.** States have to accept their role in organizing and guaranteeing such a support system.

Rights that are critical to ensuring the lives, health and well-being of older persons

What are the most important rights of older persons, which should be at the core of a systemic approach of States as it was mentioned above. The two institutions believe that a new Convention would be an ideal place to highlight and precisely describe the human rights that are relevant for older persons. Due to the fact that not all of them are currently sufficiently covered under the existing international human rights treaties such a new Convention would help to understand these rights and to facilitate the development of adequate policies to implement them. Additionally **we indicate here some of the challenges for the implementation of these rights for older persons caused during the coronavirus pandemic.** This is at the same time illustrating the urgent need of introducing the Convention.

³ UN Special Rapporteur on the human rights of person with disabilities, ' COVID-19: Who is protecting the people with disabilities? – UN rights expert', <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=E>.

⁴ Report of the Independent Expert on the enjoyment of all human rights by older persons.

Older persons have the right to be well informed about public affairs, including in times of emergencies – they have a right to easy, prompt, effective and practical access to information,⁵ especially to the knowledge particularly relevant for the group. Older persons who live alone, in care homes or in rural areas might have limited access to information distributed via new technologies due to lack of devices as well as limited digital skills and assistance. Moreover, **the information should be provided not only in a technically accessible way but also in an efficient form of communication adapted to their individual needs.** For instance, older persons who are under stress, or experiencing social isolation or other disruptive factors might not realize or even deny the threat posed by the pandemic. In this context, the role of the State is to maintain the trust between health personnel, public authorities and older persons by appropriate communication.

Older persons may need to stay longer in isolation than others - to be better protected from the disease. In this regard States must ensure that the group of older persons obtain access to additional support and new ways of staying in contact with their family, friends and volunteers. Restrictions on freedom of movement should be closely monitored by States: such restriction can only be accepted for short periods and there should be ongoing verification that the restrictions are still needed and proportionate.⁶

Everyone has a right to the highest attainable standard of health, which means that States are obliged to respond to the specific needs of vulnerable groups in this regard,⁷ including older persons. The role of the State is to ensure that public health policies have no discriminatory or ageist effects on older persons, in particular during the coronavirus crisis. States need to prepare and implement triage procedures, which are not in any way discriminatory based on age. It is important to guarantee access to health services during the pandemic for health issues that are not related to Covid-19. This is particularly crucial for the health and lives of older persons.

The right to the highest attainable standard of health includes several interrelated elements, one of which is **the right to accessible and affordable long-term care services of good quality without discrimination** in institutions as well as home-care and community-based services without discrimination of any kind. In order to achieve the full realization of this right, States must adopt and implement national health policies/strategies and plans of action, based on the assessment of the needs of older persons. This should be conducted in a participatory manner by consulting older

⁵ Human Rights Committee, General comment No. 34: Article 19: Freedoms of opinion and expression, CCPR/C/GC/34/CRP.4, para. 19.

⁶ Jeremy McBride, 'An Analysis of Covid-19 Responses and ECHR Requirements', ECHR Blog, 27 March 2020,

⁷ CESCR Committee, General Comment No. 14: The right to the highest attainable standard of health E/C.12/2000/4, para. 37.

persons in a way adapted for their needs. Older persons living in institutions, alternative settings or at home should not be left behind.⁸

States must also **ensure that a good quality palliative care is available, acceptable and accessible for older persons** and to enable timely access to information about existing options for palliative care support and services. This is extremely challenging task during a pandemic, however, according to the progressive nature of the right to health, States have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of the right to health.⁹

All mechanisms introduced should be based on respect for the inherent dignity, independence, and individual autonomy of older persons, including the freedom to make one's own choices. **Older persons have the right to personal autonomy and independence in relation to all aspects of their lives** and to exercise that autonomy and independence in line with their will and preferences and on an equal basis with others. Where a person needs assistance to exercise their autonomy and decision-making capacity, an available support structure might be needed to ensure the necessary assistance in times of reduced contact with others. The right to autonomy and independence of older persons includes individual, economic and financial and procedural aspects. **Moreover, States should introduce effective measures to assess and monitor the enjoyment of the right in practice.** States should ensure that the law on guardianship complies with the principle that the will and preferences of the person are fully respected and not undermined by use of a criterion of the "best interests of the older person". It might be necessary to provide training to formal and informal caregivers and volunteers about human rights including the rights to autonomy and independence.

Older persons have the right to live without violence, abuse and neglect also in times of the coronavirus crisis. Due to the stay-at-home orders issued in many countries, older persons might be exceptionally affected by conflicts in families and other care settings. To strengthen protection of the rights of older persons, States should provide access to information, help and complaint mechanisms, including legal assistance. The need to get access to shelter or other requirements including long-term care services might increase during a pandemic.

The right to social inclusion requires the mainstreaming of the rights of older persons into various fields, such as rural and urban planning and development policies as well as poverty reduction strategies. States must ensure active measures against ageism and a re-conceptualizing of the way in which societies perceive older persons. It is necessary to transform the prevalent stereotypes of older persons and highlight their role as vital and active contributors to society and rights holders.

⁸ AGE Platform Europe 2020, COVID-19 and human rights concerns for older persons.

⁹ CESCR Committee, General Comment No. 14: The right to the highest attainable standard of health E/C.12/2000/4, para. 31.

Conclusion – the need for a new comprehensive convention on the human rights of older persons

A comprehensive and integrated international legal instrument would help to promote and protect the rights and dignity of older persons. The impacts of the pandemic have made evident that many policies and mechanisms used or taken by states are inadequate or insufficient from a human rights perspective, and these have had a severe impact on the lives of older persons. **We call on States to commence drafting and adopting a Convention on the rights of older persons in order to foster a better understanding of the scope and meaning of human rights for older persons.** It will help to demonstrate that States respect the equal worth and care for the dignity of every individual including older person.

We have all observed the changes in attitudes towards persons with disabilities and the actions undertaken by States that have resulted from the Convention of the Rights of Persons with Disabilities. We are convinced that the development and adoption of a convention on the rights of older persons will have a similar influence and impact. **A convention with a focus on the rights of older persons can make a positive difference in this regard.**¹⁰

¹⁰ BAGSO statement,
https://www.bagso.de/fileadmin/user_upload/bagso/06_Veroeffentlichungen/2020/20200401_Konvention_der_UN_fuer_die_Rechte_aelterer_Menschen_engl.pdf.