

# The United Nations and Older Persons: A Global Approach with Multiple Dimensions

## A. A United Nations Introduction

Rich and poor countries alike are currently experiencing extraordinary demographic changes with respect to the rising number of older persons in their populations. Over the next four decades, the population over age 60 in developed countries is projected to double.<sup>1</sup> In developing countries, it is expected to triple, reaching a staggering 1.6 billion by 2050.<sup>2</sup> These changes will create a new set of challenges that should be dealt with coherently, including an acute need for redistribution of resources for access to justice, participation in political and social life, social security, and health care. Furthermore, states, as primary protectors of human rights, will face challenges related to upholding human rights in the new demographic landscape.

United Nations' Follow-Up to the Second World Assembly on Ageing<sup>3</sup> describes the problem this way: "[An] absence of nuanced, targeted, and comprehensive approaches toward the rights of older persons leave them with chronic poverty, untreated illness, homelessness or inadequate shelter, violence and abuse, lack of education, low paying jobs, ineffective legal protection, vulnerability,

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<sup>1</sup>UN Secretary General, *Follow up to the Second World Assembly on Ageing*, 9 3, U.N. Doc. A/64/127 (Jul. 6, 2009).

<sup>2</sup>Peggy Kelly, *Intersection of Population and Human Rights: Rights of Older Persons in the International Context, Meeting of Experts Regarding Population, Inequality, and Human Rights* U.N. Econ. Comm. for Latin America and the Caribbean (2006), available at <http://www.eclac.org/celade/noticias/paginas/6/27116/KellyP.pdf>. (last visited Oct. 23, 2014). (*hereinafter* Kelly Report).

<sup>3</sup>United Nations, General Assembly, *Follow-Up to the Second World Assembly on Ageing* G.A. Res. 63/151, U.N. Doc. A/63/424 (Feb. 11, 2009) <http://www.worldlii.org/int/other/UNGARsn/2008/197.pdf> (Follow-Up to the Second World Assembly on Ageing).

exclusion, and isolation.”<sup>4</sup> This diagnosis touches on almost every area of life - it is not just a problem of either economic, social and cultural rights, or civil and political rights.

This chapter focuses on international United Nations human rights frameworks and their impact on the status of the rights of older persons. The scope of analysis includes universal human rights instruments, as well as related work produced by treaty bodies including comments, recommendations, conclusions, and reports. This chapter will also endeavor to analyze older persons' human rights through the lens of the spectrum of the life course. Additionally, this chapter identifies a number of group rights which have further impact on the situation of older persons represented in particular groups.

Although international human rights standards have gained increasing recognition for the rights of individuals generally, the rights of older persons have not yet received the international legal treatment they require. The current international standards and recommendations on the rights of older persons derive from the fundamental premises established by United Nations (UN) human rights instruments starting with the Universal Declaration of Human Rights (UDHR). The UDHR, together with the International Covenant on Civil and Political Rights (ICCPR), its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) form the International Bill of Human Rights. Article 25, paragraph 1 of the UDHR states that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, *old age* or other lack of livelihood in circumstances beyond his control.<sup>5</sup>

Since the adoption of the UDHR, more international and regional instruments addressing the protection and promotion of human rights have been created. The rights of older persons are theoretically addressed by virtue of their being human, even where they are not specifically mentioned, as above. Instruments have taken the form of treaties, agreements, conventions, and protocols. These instruments bind the contracting states to negotiated terms, agreed to by ratification or accession. However, none of these instruments explicitly refers to age as a prohibited ground for discrimination.<sup>6</sup>

The treaty bodies have developed protections that have expanded the scope of the respective treaties, including the rights of older persons, through General Comments (Economic, Social and Cultural Rights Committee) and through General Recommendations (Committee for the Elimination of all forms of Discrimination against Women). Standards for the rights of older persons are also enshrined in other instruments including plans of action, declarations, resolutions, and recommendations generated by the treaty bodies and a number of multilateral organizations.

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<sup>4</sup>*Id.* at para. 49. *Id.* 49.

<sup>5</sup>Universal Declaration on Human Rights, Article 25. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, Art. 25, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948).

<sup>6</sup>U.N. Secretary-General, *Report on Ageing*, 13 (2009).

In the context of an international human rights framework, the rights of older persons are universal and inalienable, indivisible, interdependent and interrelated,<sup>7</sup> just as they are for any human being. Additionally, the concepts of equality and non-discrimination apply to these rights.<sup>8</sup> This chapter will discuss the different types of rights as well as systems of protection in order to expand the understanding of the notion of older persons' rights, centering on specific international norms and their interpretation by treaty bodies and application in the Human Rights Council.

## **B. United Nations Human Rights Framework on Aging**

### ***a. The UN System***

The UN aims to “bring all nations of the world together to work for peace and development, based on the principles of justice, human dignity and the well-being of all people.”<sup>9</sup> It is structured such that states may “balance global interdependence and national interests when addressing international problems.”<sup>10</sup>

Article 10 of the UN Charter empowers the General Assembly to discuss any questions or any matters within the scope of the Charter. Further, the General Assembly can initiate studies and make recommendations for the purpose of assisting in the realization of human rights.<sup>11</sup> The General Assembly is composed of all UN member states. Although its resolutions are not per se legally binding, they are an important reflection of the collective will of the world community, and in some cases reflect binding customary law. Much of the debate and drafting surrounding resolutions occurs in six main committees of the General Assembly. This chapter deals in particular with the Third Committee of the UN General Assembly (Third Committee), which focuses on social, humanitarian, human rights and cultural issues.<sup>12</sup>

The UN Charter also outlines the role of the organization with regard to respecting equal rights and promoting higher standards of living, employment and the economic conditions of social progress. It strives to promote universal

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<sup>7</sup>See *Report of the Expert Group Meeting “Rights of Older Persons”* United Nations Dep’t of Econ. and Soc. Affairs Division for Soc. Policy and Dev. Programme on Ageing (2009) <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>. Accessed 20 January 2014. See Expert Group Meeting on the Rights of Older Persons, Bonn, Ger., May 5–7, 2009, <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>.

<sup>8</sup>Id.

<sup>9</sup>U.N. Cyber School Bus, *An Introduction for Students* (Oct. 23, 2014), <http://www.un.org/cyberschoolbus/unintro/unintro.asp>.

<sup>10</sup>Id.

<sup>11</sup>U.N. Charter art. 13 (1945).

<sup>12</sup>Henry J. Steiner, Philip Alston, & Ryan Goodman, *Human Rights in Context* 739 (3d ed. 2008).

respect for human rights and fundamental freedoms for all, though it stops short of expressly recognizing prohibited distinctions other than race, sex, language, and religion.<sup>13</sup> It does not include age as a prohibited ground for discrimination.

Human rights scholars from different regions and cultures tend to agree that human rights stem principally from the liberal tradition of Western political and legal thought.<sup>14</sup> This tradition focuses on individuals rather than groups, and equality among individuals as paramount. The vital concept of equality informs the dignity of all human beings, the respect to which individuals are entitled, and the right for self-realization.<sup>15</sup> However, the notion of human rights has quickly evolved to include collective rights, among other contemporary forms of rights now recognized in many international instruments.

At the UN, human rights are monitored in two ways. Firstly, the organs created directly through a mandate of the UN Charter, such as the General Assembly and the Human Rights Council, monitor human rights. Secondly, treaty-based bodies created by a range of UN human rights treaties monitor states' compliance with their obligations under each treaty, respectively.<sup>16</sup>

## ***UN Social Policy and Soft Law***

The Third Committee is the main committee of the UN General Assembly that addresses agenda items relating to a range of social, humanitarian affairs and human rights issues by drafting resolutions for consideration by the Assembly.<sup>17</sup> The Commission for Social Development as a functional body of the Economic and Social Council has taken an increasingly active role in standard setting around social issues. For example, in 2001, a mandate for a draft of the Convention on the Rights of Persons with Disabilities stalled in the Commission on Human Rights. The Commission for Social Development established a special committee that successfully moved the CRPD forward. The Commission for Social Development has proven to be a body capable of developing new standards. This shows how bodies not belonging to the main UN human rights system can also be alternative fora to overcome stagnant processes. Its role in the

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<sup>13</sup>United Nations, *Charter of the United Nations*, 1 UNTS XVI (October 24 1945), available at <http://www.refworld.org/docid/3ae6b3930.html>. Article 55, <http://www.un.org/en/documents/charter/chapter9.shtml>. (last visited Oct. 23, 2014).

<sup>14</sup>Philip Alston and Ryan Goodman, *International Human Rights*, 525 Oxford University Press (2013), at 525.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>U.N. General Assembly, *Social, Humanitarian, & Cultural* (Oct 23, 2014), available at <http://www.un.org/ga/61/third/third.shtml>.

Convention on the Rights of Persons with Disabilities may be considered evidence of this standard setting work.<sup>18</sup>

The UN secretariat, or agencies, also conduct social policy work, which can result in soft law. In 1982 the UN General Assembly held the first world conference on aging: the World Assembly on Ageing. This Assembly issued the Vienna International Plan of Action on Ageing (hereinafter “Vienna Plan”).<sup>19</sup> This first world conference was followed in 2002 by the Second World Assembly on Ageing that adopted the Madrid International Plan of Action on Ageing (hereinafter “Madrid Plan” or “MIPAA”).<sup>20</sup> The Second World Assembly was preceded a decade earlier by the 1991 United Nations Principles for Older Persons adopted by the General Assembly, and by the 1992 International Conference on Ageing as a follow up to the Vienna Plan. In this two-decade process, the UN refined its approach in identifying its main concerns regarding older persons.

In this chapter, the work of UN human rights mechanisms, other UN institutions, and UN specialized agencies are addressed. Older persons have been surprisingly absent from much of the ongoing work in each of these spheres, given the directives of the 1982 and 2002 world conferences and related UN resolutions, 2002 UN Madrid International Plan of Action on Ageing (MIPAA), which called for the mainstreaming of older persons in all UN programs of work.

Old age is a contextual, social concept with real implications for older persons. Older persons experience direct and indirect discrimination, and the cumulative effects of chronic poverty; violence and abuse; exclusion from social and political participation; and barriers to redress through access to justice.<sup>21</sup> In many developed countries, old age is sometimes thought to be commensurate with the age at which a person becomes eligible for a social pension. In those cases, society, through the government, determines that older persons reaching this age should be entitled to additional protections. In other societies, a person may become “old” when they have grandchildren, or great grandchildren. Whatever the societal construct, becoming “old” can mean facing discrimination, and invisibility.

Older persons’ human rights have always been closely associated with the “economic and technical co-operation undertaken by United Nations bodies, agencies, funds, and regional commissions, particularly in the field.”<sup>22</sup> Since 2002, the inter-

<sup>18</sup>The Commission is the Organ Implementing MIPAA (Madrid International Plan of Action on Ageing) (See Report of the Second World Assembly on Ageing, 1–43, U.N. Doc. A/CONF.197/9, U.N. Sales No. E.02.IV.4 (2002) (outlining the Madrid Plan)). (See U.N. World Assembly on Ageing, Apr. 8–12, 2002, *Report of the Second World Assembly*, U.N. Doc. A/CONF.197/9, 1–43.

<sup>19</sup>U.N. World Assembly on Ageing, Jul. 26–Aug. 6, 1982, *Vienna International Plan of Action on Ageing*, <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>.

<sup>20</sup>U.N. World Assembly on Ageing, Apr. 8–12, 2002, *Political Declaration & Madrid International Plan of Action on Ageing*, [http://www.un.org/en/events/pastevents/pdfs/Madrid\\_plan.pdf](http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf).

<sup>21</sup>*United Nations Mechanism for the Human Rights of the Older Person*, A/HRC/AC/4/CRP.1 (Chinsung Chun 2009).

<sup>22</sup>Sandra Huenchuan and Luis Rodríguez-Piñero, *Ageing and the Protection of Human Rights: Current Situation and Outlook*, 51 (Sandra Huenchuan & Luis Rodríguez-Piñero, 2011).

national community has engaged in a number of efforts geared toward the protection of older persons: the United Nations Department of Economic and Social Affairs has led 5-year and 10-year reviews of MIPAA, the Committee for the Elimination of Discrimination against Women came out with a General Recommendation on older women's rights<sup>23</sup>; and the UNFPA has turned its attention to the compilation of a report on the "State of the World's Older Persons," prepared in conjunction with the 10-year review of MIPAA.<sup>24</sup> MIPAA, as has been mentioned in the introduction, is a soft law instrument, and will be more fully addressed subsequently in this book. These activities did not all engage in the advancement of older persons' rights, but some may have heightened the international profile of the situation of older persons. UNFPA in particular has integrated a human-rights based approach to development,<sup>25</sup> which has been important in the discussion of the equal rights of older people.

## *The UN OEWG*

Much of this thinking may be changing with the creation of the UN's Open-Ended Working Group on Strengthening the Human Rights of Older Persons (OEWG), a political meeting of the UN Member States. In September, 2010, the UN Secretary General released a report on the human rights of older persons.<sup>26</sup> This was released in response to a 2009 General Assembly resolution requesting more information on the full picture of the situation of older persons.<sup>27</sup> While it

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<sup>23</sup>Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 27: The Rights of Older Women*, U.N. Doc. CEDAW/C/GC/27 (Dec. 16, 2010). <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>.

<sup>24</sup>Ann Pawliczko, Presentation at the U.N. Celebration of the International Day of Older Persons (Oct. 5, 2011).

<sup>25</sup>See, e.g. UNFPA, 2009. *Integrating Human Rights, Culture and Gender in Programming A Human Rights Based Approach to Programming* (2010). [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/hrba/module\\_1.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/hrba/module_1.pdf) (last visited Feb. 18 2015); See, e.g. U.N. Population Fund, *Integrating Human Rights, Culture and Gender in Programming: A Human Rights Based Approach to Programming* (2009), [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/hrba/module\\_1.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/hrba/module_1.pdf). (last visited Oct. 23, 2014); UNFPA at Work, *Six Human Rights Case Studies*, [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2008/6human\\_rights\\_cases.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2008/6human_rights_cases.pdf). (last visited Oct. 23, 2014). U.N. Population Fund, *Human Rights Based Programming: What It Is*, (2006). [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2007/human\\_rights.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2007/human_rights.pdf) (last visited Feb. 18 2015).

<sup>26</sup>U.N. Secretary-General, "Follow-up to the Second World Assembly on Ageing" Submitted Pursuant to the General Assembly Res. 65/182 U.N. Doc. A/66/173 (Dec. 2010) (July 22, 2011).

<sup>27</sup>*Follow-Up to the Second World Assembly on Ageing*, G.A. Res. 64/132, U.N. Doc. A/RES/64/132 (Feb. 5, 2010).

took note of policies and programs within the UN system targeting older persons, it also discussed the legal problems older persons face. The report outlined discrimination and ageism, poverty, violence and abuse, and the lack of specific measures and services for older persons today, and in the future. It sought to explore options to improve the situation of older persons worldwide, and created the OEWG.

In August 2011, the OEWG highlighted four main gaps: “norms, monitoring, implementation, and data surrounding older persons.”<sup>28</sup> Likewise, it stressed that at an international level, the “existing rights have not been specifically applied, and thus proper implementation cannot be achieved.”<sup>29</sup> Among the member states present, there was consensus for continued support of the work of the OEWG, and various expressions of the desire for the intensification of the inquiry.<sup>30</sup>

The OEWG’s initial mandate allowed it to “consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.”<sup>31</sup> The mandate of this working group changed with General Assembly resolution 67/139 of 20 December 2012. It is now charged to “Consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons, based on the holistic approach in the work carried out in the fields of social development, human rights and non-discrimination, as well as gender equality and the empowerment of women...” This change in mandate was not reflected in the program of work at the fourth session of the OEWG in 2013. It was also not reflected in the program of work at the fifth session of the OEWG in 2014, although the lack of direct response to the changed mandate was discussed by Member States present.

A CESCR representative noted at the first OEWG meeting in April, 2011, that at this point, dedicated human rights committees *extend* human rights to older persons; before an argument or complaint can be made about the violation of an older person or group of older persons’ rights, applicants must first explain how supposedly universal law applies to them.<sup>32</sup> As a matter of course human rights cannot be accessed by older persons in the current framework.

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<sup>28</sup>U.N. Open-Ended Working Group on Ageing, *Daily Summary of the 2d Session* (Bethany Brown, Aug. 4, 2011), <http://globalaging.org/agingwatch/convention/un/OEWG%20August%20Day%204.html>.

<sup>29</sup>*Id.*

<sup>30</sup>NGO Committee on Ageing, *Recap Aug. 4: UN Open-Ended Working Group on Ageing* (Aug. 4, 2011), <http://www.ngocoa-ny.org/the-second-un-open-ended/recap-aug-4-un-open-ended.html>.

<sup>31</sup><http://social.un.org/ageing-working-group/>. G.A. Res. 67/139, U.N. Doc. A/RES/67/139 (Feb. 13, 2013).

<sup>32</sup>*See* comments of Rocio Barahona Riera, April 19, 2011, OEWG, New York. *See* Rocio Barahona Riera, Comments at the U.N. Open-Ended Working Group on Ageing (April 19, 2011).



## *Civil Society and the UN OEWG*

Through its mandate, the OEWG has given civil society the opportunity to play an active role in its work. In many sessions, equal time was devoted to interventions from states and civil society at the 2011 meetings of the OEWG. NGO's involved in the OEWG so far have ranged from groups of gerontologists, to retired civil servants, to the International Network for the Prevention of Elder Abuse. Through this exchange, organizations that serve or advocate for older persons directly have had a platform to share evidence of how the existing human rights framework does not adequately protect the rights of older persons.

Work is also being done in partnership with the UNFPA to strengthen civil society's support of ongoing work for older persons' rights. Professors Martin and Rodriguez-Pinzon, together with the UNFPA, have convened two training sessions for older persons' advocates from around the world in 2010 and 2011. Similar meetings should be convened to better train advocates at all levels in the understanding of human rights, and existing mechanisms.

A way to amplify civil society's voice is an important resource in an advocacy movement.<sup>33</sup> One such group was created among some of the largest NGO's after the first session of the OEWG. In 2013, it announced plans to accept membership of the broader community of organizations advocating for the rights of older persons. It aims to be a source of information, a communications resource, and to support the writing of strategic positioning papers.<sup>34</sup>

## *1. Overview of International Law*

This chapter will review the instruments in greater depth, but this section provides an overview of basic human rights sources. The Universal Declaration of Human Rights (UDHR)<sup>35</sup> was adopted by the UN General Assembly. It is the world's common standard of respect and universal recognition and observance of basic rights and freedoms.<sup>36</sup> It is a statement of objectives to be pursued by governments, and therefore it is not per se part of binding international law. Nonetheless, it remains a potent way to apply moral and diplomatic pressure on states that

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<sup>33</sup>J. Sciubba, *Explaining Campaign Timing and Support for a UN Convention on the Rights of Older People*, 18 Int'l J. Hum. Rts. 462, 474 (2014), <http://www.tandfonline.com/eprint/Xulpnacg7NKbEkTAFeb3/full>. (last visited Oct. 23, 2014).

<sup>34</sup>See Global Alliance for the Rights of Older Persons, [www.rightsofolderpeople.org](http://www.rightsofolderpeople.org). (last visited Oct. 23, 2014).

<sup>35</sup>Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). <http://www.un.org/en/documents/udhr/>.

<sup>36</sup>Preamble, Universal Declaration of Human Rights <http://www.un.org/en/documents/udhr/>. (last visited Oct. 23, 2014).



violate the UDHR's principles, and many of its provisions are indeed a reflection of international customary law.<sup>37</sup>

The International Covenant on Civil and Political Rights (ICCPR),<sup>38</sup> is a multi-lateral treaty adopted by the General Assembly, which defends core civil and political rights including the right to life,<sup>39</sup> movement,<sup>40</sup> expression,<sup>41</sup> association<sup>42</sup> and stipulates that "no one shall be subjected to torture;"<sup>43</sup> slavery<sup>44</sup>; or forced or compulsory labor, among others.<sup>45</sup>

The Human Rights Committee (HRC),<sup>46</sup> a body of independent experts, monitors the implementation of the ICCPR by state parties. It accepts and examines reports and then addresses its concerns and recommendations to the state party in the form of "Concluding Observations." It also considers individual complaints against state parties to the ICCPR Optional Protocol, which provides for an individual petition system.<sup>47</sup>

The Human Rights Council (HR Council), which replaced the Commission on Human Rights, is responsible for strengthening the promotion and protection of human rights around the world.<sup>48</sup> The success of any human rights reporting "will frequently depend upon the composition of the supervisory body, its commitment to the case of human rights, its creativity and the larger political climate within which it exercises its functions."<sup>49</sup> Toward that end, the HR Council was created in 2006 as an organ of the General Assembly.<sup>50</sup> Its main purpose is to address situations of human rights violations and make recommendations, as well as administer a Universal Periodic Review ("UPR") mechanism, which assesses the human rights situations in all UN Member States over the course of a four-year

<sup>37</sup>U.N. Association in Canada, *Questions and Answers about the Universal Declaration of Human Rights*, <http://www.unac.org/rights/question.html> (last visited Oct. 23, 2014).

<sup>38</sup>International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (Dec. 16, 1966), <http://www1.umn.edu/humanrts/instree/b3ccpr.htm>. (*hereinafter* ICCPR).

<sup>39</sup>*Id.* at art. 6.

<sup>40</sup>ICCPR, art 12 *Id.* at art. 12.

<sup>41</sup>ICCPR, art 19 *Id.* at art. 19.

<sup>42</sup>ICCPR, art 22 *Id.* at art. 22.

<sup>43</sup>ICCPR, art 7 *Id.* at art. 7.

<sup>44</sup>ICCPR, art 8 *Id.* at art. 8.

<sup>45</sup>ICCPR art 8.3 literal c *Id.* at art. 8.3, lit. c.

<sup>46</sup>U.N. Human Rights Committee, *Monitoring Civil and Political Rights*, <http://www2.ohchr.org/english/bodies/hrc/> (last visited Oct. 23, 2014).

<sup>47</sup>*Id.*

<sup>48</sup>U.N. Human Rights Council, *About the Human Rights Council*, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last visited Oct. 23, 2014).

<sup>49</sup>Henry J. Steiner, Philip Alston & Ryan Goodman, *International Human Rights in Context* 347 (3d ed. 2008) (quoting Thomas Buergenthal, *The U.N. Human Rights Committee*, 2001 U.N.Y.B.341, 347).

<sup>50</sup>G.A.Res. 60/251.U.N.Doc.A/60/L.48 (Apr. 3, 2006) (creating the HRC).

schedule.<sup>51</sup> The most contentious issues in its creation were related to its deliberations, composition and functions, including the UPR, and its relationship to the special procedures and the mechanisms it ‘inherited’ from the Human Rights Commission.<sup>52</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>53</sup> commits state parties to the progressive realization of individual economic, social, and cultural rights within the global human rights framework.<sup>54</sup> The Committee on Economic, Social and Cultural Rights<sup>55</sup> (CESCR) is the body of independent experts that monitors implementation of the ICESCR by its state parties.<sup>56</sup> The United Nations has pointed out that “the process of reporting provides an opportunity for an individual state party to conduct a comprehensive review of the measures it has taken to bring its national law and policy into line with the provisions of the treaties to which it is a party. The preparation of reports provides a platform for national dialogue on human rights amongst the various stakeholders in a State party”. Likewise, reporting “facilitates public scrutiny at the national level of government approaches to implementation, and stimulates constructive discussion with civil society of a way to advance enjoyment by all of the rights laid down in the various conventions.”<sup>57</sup> The value of the reporting process is truly national and it can be assessed on how it helps improve the lives of the persons for which states are responsible.

After the submission of the State report on the implementation of the ICESCR, CESCR proceeds to its analysis and the issuing of its observations. This process can be described as follows: “Upon completion by the Committee of its analysis of reports by state parties, the committee concludes its consideration of the State parties’ reports by issuing “Concluding Observations,” which constitute the decision of the Committee regarding the status of adherence to the Covenant in a given

<sup>51</sup>U.N. Human Rights Council, *About the Human Rights Council*, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last visited Oct. 23, 2014).

<sup>52</sup>Steiner & Alston, *supra* note 42, 791 and 803.

<sup>53</sup>International Covenant on Economic, Social & Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (hereinafter ICESCR) <http://www2.ohchr.org/english/law/pdf/cescr.pdf>.

<sup>54</sup>*See Fact Sheet No. 16 (Rev. 1)*, Comm. on Econ., Soc., and Cultural Rights, (July 1 1991), <http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>.

<sup>55</sup>U.N. Committee on Economic, Social, and Cultural Rights, *Monitoring the Economic, Social, and Cultural Rights*, <http://www2.ohchr.org/english/bodies/cescr/>.

<sup>56</sup>Office of the High Commissioner for Human Rights, *Ratification of the International Covenant on Economic, Social, and Cultural Rights*, (Aug. 2014) <http://www2.ohchr.org/english/bodies/cescr/>.

<sup>57</sup>International Human Rights in Context, p. 851, quoting ‘Concept Paper on the High Commissioner’s proposal for a unified standing treaty body’, UN doc. HRI/MC/2006/2 (2006) summarizing the approach of Committee on Economic, Social and Cultural Rights, General Comment 1 (1989): Reporting by States Parties, UN Doc. HRI/GEN/1/Rev.8, p.9, para.8. Henry J. Steiner, Philip Alston & Ryan Goodman, *International Human Rights in Context* 851 (3d ed. 2008) (quoting U.N. Secretariat, *Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body*, U.N. Doc. HRI/MC/2006/2 (2006)) (summarizing the approach of U.N. Committee on Economic, Social, and Cultural Rights, *General Comment 1: Reporting by States Parties*, 8, UN Doc. HRI/GEN/1/Rev.8 (1989)) <http://www.iilj.org/courses/documents/ConceptPaperonUnifiedStandingTreatyBody.pdf>. (last visited Oct. 23, 2014).

state party.”<sup>58</sup> However, the CESCR has indicated that “while the Committee’s concluding observations, in particular its suggestions and recommendations may not carry legally binding status, they are indicative of the opinion of the only expert body entrusted with and capable of making such pronouncements. Consequently, for state parties to ignore or not act on such views would be to show bad faith in implementing their Covenant-based obligations.”<sup>59</sup>

The CESCR also publishes its interpretation of the provisions of the ICESCR as General Comments.<sup>60</sup> The most relevant General Comments for older persons so far are: General Comment No. 3 on The Nature of States Parties Obligations<sup>61</sup>; General Comment No. 4 on The Right to Adequate Housing<sup>62</sup>; General Comment No. 5 on the Rights of Persons with Disabilities<sup>63</sup>; General Comment No. 6 on The Economic, Social and Cultural Rights of Older Persons<sup>64</sup>; General Comment No. 12 on The Right to Adequate Food<sup>65</sup>; General Comment No. 13 on The Right to Education<sup>66</sup>; General Comment No. 14 on The Right to the Highest Attainable Standard of Health; and General Comment No. 19 on The Right to Social Security.<sup>67</sup>

<sup>58</sup>Committee on Economic, Social, and Cultural Rights. *Fact Sheet No. 16 (Rev. 1)*, 16 (July 1991), <http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>.

<sup>59</sup>*Id.* at 17.

<sup>60</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comments*, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) (last visited Feb. 18 2015).

<sup>61</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties Obligations (Art. 2, Par. 1 of the Covenant)*, U.N. Doc. E/1991/23 (Jan. 1 1991), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1991%2f23\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1991%2f23(SUPP)&Lang=en).

<sup>62</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11.1 of the Covenant)*, U.N. Doc. E/1992/23 (Jan. 1, 1992), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1992%2f23&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1992%2f23&Lang=en).

<sup>63</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 5: Persons with Disabilities*, U.N. Doc. E/1995/22 (Jan. 1, 1995), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1995%2f22\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1995%2f22(SUPP)&Lang=en).

<sup>64</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*, U.N. Doc. E/1996/22 (Oct. 7, 1996), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1996%2f22\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1996%2f22(SUPP)&Lang=en).

<sup>65</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, U.N. Doc. E/C.12/1999/5 (May 12, 1999), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en).

<sup>66</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en).

<sup>67</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The Right to Social Security (Art. 9 of the Covenant)*, U.N. Doc. E/C.12/GC/19 (Aug. 11, 2000), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19&Lang=en).

In General Comment No. 6 on the economic, social, and cultural rights of older persons, the CESCR developed a comprehensive legal analysis of the rights of older persons at the international level.<sup>68</sup> Adopted in 1995, it interprets the ICESCR from the perspective of older persons,<sup>69</sup> expands the scope of the ICESCR and provides insight into different mechanisms needed to protect the rights of older persons worldwide. It has structural divisions that can serve as a blueprint for further analysis, and elaboration of a comprehensive set of the rights of older persons. Additionally, the CESCR issued several other general comments that provide an authoritative guide to understanding the scope of the ICESCR.

There is no binding international instrument or even supervisory body dealing specifically with the rights of older persons. At the time it was drafting this General Comment, the CESCR gave additional weight to the importance of the Vienna Plan and the five UN Principles for Older Persons.<sup>70</sup> If it were making pronouncements today, it might further look to the Convention on the Rights of Persons with Disabilities, MIPAA, and the Convention on the International Protection of Adults.

In the International Convention on the Elimination of All Forms of Racial Discrimination (“ICRD”),<sup>71</sup> “state parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.”<sup>72</sup> They undertake “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.”<sup>73</sup>

The Committee on the Elimination of Racial Discrimination (“CERD”) <sup>74</sup> is the body of independent experts that monitors implementation of the ICRD by state parties. The CERD receives regular reports from state parties and as it has stated it also “addresses its concerns and recommendations to the State party in the form of “Concluding Observations.” Regarding other monitoring mechanisms, CERD’s

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<sup>68</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 6: Economic Social and Cultural Rights of Older People.*, U.N. Doc.E/1996/22 (Oct. 7, 1996), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1996%2f22\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1996%2f22(SUPP)&Lang=en).

<sup>69</sup>*Id.* 9–15.

<sup>70</sup>U.N. Secretary-General. *Follow up to the Second World Assembly on Ageing*, U.N. Doc. A/64/127(July 6, 2009).

<sup>71</sup>U.N. General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, Treaty Series, vol. 660, p. 195 (Dec. 21 1965) available at <http://www.refworld.org/docid/3ae6b3940.html>. (last visited Oct. 23, 2014). (hereinafter ICERD).

<sup>72</sup>ICERD, art 2. *Id.* at art. 2.

<sup>73</sup>ICERD, Article 2,1 literal a. *Id.* at art. 2.1, lit.a.

<sup>74</sup>U.N. Committee on the Elimination of Racial Discrimination, *Monitoring Racial Equality and Non-Discrimination*, <http://www2.ohchr.org/english/bodies/cerd/>. (last visited Oct. 23, 2014).

tools include an early-warning system, and the examination of inter-state complaints and individual complaints.<sup>75</sup>

Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)...<sup>76</sup> “defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.”<sup>77</sup> States that have ratified or acceded to the CEDAW have the legal obligation to implement it. They are required to submit national reports periodically (at least every four years) on the level of implementation of their treaty obligations.<sup>78</sup>

The Committee on the Elimination of Discrimination against Women<sup>79</sup> (“CEDAW Committee”) is a body composed of experts on women’s issues from around the world, which has the mandate to mark progress for women in countries party to CEDAW.<sup>80</sup> The CEDAW Committee makes “General Recommendations” on any issue affecting women to which it believes the states parties should devote more attention,<sup>81</sup> which are based on the examination of reports and information received from states parties.<sup>82</sup> Most recently, the CEDAW Committee adopted General Recommendation 27 on Older Women and Protection of their Human Rights.<sup>83</sup> Additionally, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women<sup>84</sup> (“CEDAW Optional Protocol”) establishes enforceability procedures.

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<sup>75</sup>Id.

<sup>76</sup>UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> (hereinafter CEDAW).

<sup>77</sup>U.N. Committee on the Elimination of Discrimination against Women. *Convention on the Elimination of All Forms of Discrimination Against Women: Overview of the Convention*, <http://www.un.org/womenwatch/daw/cedaw/> (last visited Feb. 18 2015).

<sup>78</sup>U.N. Committee on the Elimination of Discrimination against Women. *Convention on the Elimination of All Forms of Discrimination Against Women: Country Reports*, [www.un.org/womenwatch/daw/cedaw/reports.htm](http://www.un.org/womenwatch/daw/cedaw/reports.htm) (last visited Feb. 18 2015).

<sup>79</sup>U.N. Committee on the Elimination of Discrimination against Women, *Overview of Current Working Methods of the Committee on the Elimination of Discrimination Against Women*, U.N. Doc. CEDAW/C/2007/1/4/Add.1 (Oct. 25, 2006), <http://www.un.org/womenwatch/daw/cedaw/committeeworkingmethods.html>.

<sup>80</sup>U.N. Committee on the Elimination of Discrimination against Women, *Information Note 2*, (May 1999), <http://www.un.org/womenwatch/daw/cedaw/cedaw20/committee.htm>.

<sup>81</sup>Id.

<sup>82</sup>U.N. Committee on the Elimination of Discrimination against Women, *Convention on the Elimination of All Forms of Discrimination Against Women.: General Recommendations*. <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html> (last visited Feb. 18 2015).

<sup>83</sup>U.N. Committee on the Elimination of Discrimination against Women, *General Recommendation No 27 on older women and protection of their human rights*, U.N. Doc. CEDAW/C/GC/27 (Dec. 16, 2010).

<sup>84</sup>UN General Assembly, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 2131 U.N.T.S. 83. p. 83, (Oct. 6 1999) available at <http://www.refworld.org/docid/3ae6b3a7c.html>.

The Convention Relating to the Status of Refugees<sup>85</sup> (“Refugees Convention”) seeks “to assure refugees the widest possible exercise of fundamental rights and freedoms”,<sup>86</sup> and facilitate co-operation between states and with the UN High Commissioner for refugees.<sup>87</sup>

The Convention on the Rights of Persons with Disabilities<sup>88</sup> (“CRPD”) is a major step toward changing the perception of disability to ensure that societies recognize that all persons must be provided with the opportunities to live life to their fullest potential.<sup>89</sup> The CRPD encourages the right to live independently and be included in the community in its Article 19. It also promotes the habilitation and rehabilitation of the persons with disabilities in Article 26 and prohibits, in Article 27, discrimination on the basis on disability. It promotes opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business. Furthermore, an adequate standard of living and social protection are provided by the CRPD in its Article 28.

The Convention on the International Protection of Adults (“CIPA”)<sup>90</sup> is not a UN convention; rather it was developed at the Hague Convention on Private International Law in response to the aging of the world’s population.<sup>91</sup> This instrument provides “rules on jurisdiction, applicable law and international recognition and enforcement of protective measures and establishes a mechanism for co-operation between authorities of contracting states.” While relatively few states have contracted to be bound by this treaty, it provides additional protections for adults of all ages should they require decision-making assistance, or experience incapacity. The related Explanation of Convention on the International Protection of Adults outlines the history and interprets the CIPA.<sup>92</sup>

Older persons’ human rights should be included in all human rights monitoring and implementation. Member States should be encouraged by treaty bodies and other bodies such as the Commission for Social Development, to include the status

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<sup>85</sup>UN General Assembly, *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137, (July 28 1951) available at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>. *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137.

<sup>86</sup>*Id.* at preamble.

<sup>87</sup>*Id.*

<sup>88</sup>UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution/ adopted by the General Assembly*, A/RES/61/106, (Jan. 24 2007) available at <http://www.refworld.org/docid/45f973632.html>.

<sup>89</sup>U.N. Convention on the Rights of Persons with Disabilities, *Why a Convention?*, <http://www.un.org/disabilities/convention/questions.shtml>. (last visited Oct. 23, 2014).

<sup>90</sup>Hague Conference on Private International Law. *Convention on the International Protection of Adults* (Jan. 13, 2000) [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=71](http://www.hcch.net/index_en.php?act=conventions.text&cid=71).

<sup>91</sup>*Id.*

<sup>92</sup>*Id.*

of older persons' rights in their reporting.<sup>93</sup> Special procedures such as special rapporteurs and independent experts ought to closely observe and report on older persons' rights.<sup>94</sup> Cooperation among human rights-based organs including UNHCHR, the HR Council, the HRC Advisory committee, human rights NGO's and others is necessary to ensure full protection.<sup>95</sup> All these concerted efforts are crucial to ensure an integrated approach to the rights of older persons and to further develop more specific mechanisms that can appropriately undertake more specialized and permanent work in this area.

## C. Civil and Political Rights of Older Persons

Basic civil and political human rights have been considered of utmost importance for the protection and empowerment of older persons. These rights are generally considered to be immediately enforceable, and older persons are able to have legal claims brought on their behalf to ensure full recognition of such rights.<sup>96</sup> Furthermore, older persons are considered to be - in certain circumstances - a vulnerable group.<sup>97</sup> As such, state plans of action on human rights should give special attention to them<sup>98</sup> and to issues of aging in general,<sup>99</sup> which enhances the direct and immediate effect of civil and political rights. Moreover, states are also required to implement positive obligations, which require programmatic measures, in order to secure adequate implementation of such rights. Civil and political rights are therefore reinforced by development cooperation, as recognized by the

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<sup>93</sup>U.N. Human Rights Council, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, 62, A/HRC/AC/4/CRP.1 (Chinsung Chun 2009).

<sup>94</sup>Chung Working Paper, 2010 *Id.* 62.

<sup>95</sup>Chung Working Paper, 2010 *Id.* 62.

<sup>96</sup>U.N. Human Rights Council, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*, U.N. Doc. A/HRC/11/9 (Magdalena Sepúlveda Carmona, Mar. 27, 2009), <http://www.refworld.org/docid/49f846ff2.html>.

<sup>97</sup>U.N. Human Rights Council, *Report of the Special Rapporteur on Violence against Women: Its Causes and Consequences on Intersections between Culture and Violence against Women*, U.N. Doc. A/HRC/4/34 (Jan. 17, 2007), <http://www.refworld.org/docid/461e2c602.html>).

<sup>98</sup>U.N. Human Rights Council, *Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders Addendum: Mission to Indonesia*, U.N. Doc. A/HRC/7/28/Add.2 (Hina Jilani, Jan. 28, 2008), <http://www.refworld.org/docid/47baaeb62.html>.

<sup>99</sup>UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the independent expert on minority issues addendum: mission to Dominican Republic*, U.N. Doc. A/HRC/7/23/Add.3 (Doudou Diène & Gay McDougall, Mar. 18, 2008), <http://www.refworld.org/docid/47e23b252.html>.



Economic, Social and Cultural Rights Committee in its General Comment No. 14 (2000), indicating that “it is incumbent on States parties and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical, which enable developing countries to fulfill their core obligations” to this group.<sup>100</sup> Additionally, Kelly Peggy, in her 2006 paper “Intersection of population and human rights: Rights of older persons in the international context,” argues that “the first and most essential step to empowering older persons should include measures to protect their human rights.”<sup>101</sup> These statements only confirm the evident interconnection between basic human rights, social and economic development, and empowerment of older persons.

In 2010, Chung stressed in one of her working papers that “the majority of existing legislation protecting elderly rights is limited to care and maintenance in family settings. These policy structures focus on health, nutrition, long-term care, social security, and welfare programs that may benefit older persons from a welfare-based approach.”<sup>102</sup> This approach may not reflect the current requirements of rights protection, which incorporates independence and participation in society as important components. This next section examines the civil and political rights of older persons in the context of the full panoply of rights.

## ***1. The Right to Recognition Before the Law***

While it is important to recognize the need to protect older persons from an economic and social perspective, such efforts must be firmly grounded on the legal recognition that older persons have the inherent and inalienable right to a dignified life free from discrimination. Several human rights treaties have provisions on the right to be recognized before the law.<sup>103</sup> Such legal dimension includes equality under the law, equal access to justice and due process.

The issue of recognition under the law for older persons transcends national constitutional frameworks; it is reflected also in the international level where they are not specifically protected by a comprehensive thematic regime. The lack of an international convention on the human rights of the older persons also limits the

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<sup>100</sup>UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Covenant), 45, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000), <http://www.refworld.org/docid/4538838d0.html>.

<sup>101</sup>Peggy Kelly, *Intersection of Population and Human Rights: Rights of Older Persons in the International Context* (2006) <http://www.eclac.org/celade/noticias/paginas/6/27116/KellyP.pdf> (last visited Oct. 23, 2014).

<sup>102</sup>U.N. Human Rights Council, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, A/HRC/AC/4/CRP.1 (Chinsung Chun 2009).

<sup>103</sup>UDHR at art. 6; CEDAW at art. 15; CRPD at arts. 5, 12; ICCPR at art. 26.

legal recognition of this vulnerable group.<sup>104</sup> This situation simply compounds their vulnerable situation at both national and international levels.<sup>105</sup>

The difference between de jure and de facto status of State obligations to older persons is sometimes very great. Where states include national legal recognition to the rights of older persons, such recognition is not always upheld and may even be undermined by unacceptable national practices.<sup>106</sup> For example, despite having been born with these rights, a lack of identification papers such as a birth certificate to prove one's identity may prevent an older person from attaining full recognition and equality before the law. A lack of identification is just one of the barriers that may prevent older persons from fully realizing their rights.<sup>107</sup> Such situations can severely limit the exercise of many other rights by older persons, including autonomy and self-determination, and access to legal services as well as to health and other social services.

Some experts attribute discrepancies to the adoption of a welfare-oriented approach instead of a rights-based framework, combined with "a lack of international standards, effective implementation, and enforcement procedures."<sup>108</sup> In practice, the rights of older men and women are not being adequately protected or monitored. This lack of practical action is known as an "implementation gap." A study by HelpAge in 2008 showed that the treaty bodies tasked with monitoring how human rights conventions are implemented rarely ask countries to include older persons in their reporting. Governments rarely include older persons' rights in their reports to these treaty bodies.<sup>109</sup> What law there is that could apply to older persons is not being implemented. This situation could be related, at least in part, to the lack of comprehensive recognition of the rights of older persons as a distinct set of human rights recognized in international treaties and other instruments.

The general scope of the right to legal recognition is set out in Article 6 of the UDHR and Article 16 of ICCPR; everyone has the right to recognition everywhere as a person before the law. However, international human rights law lacks an explicit definition of the legal status of older persons that would reflect their particularly vulnerable position. Only the landmark General Comment No. 60 of the CESCR, actually begins by defining older persons as those persons aged

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<sup>104</sup>Chung Working Paper, U.N. Human Rights Council, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, 58, A/HRC/AC/4/CRP.1 (2010) (Chinsung Chun 2009).

<sup>105</sup>Expert Group Meeting on the Rights of Older Persons, Bonn, Ger., May 5–7, 2009, *Report of the Expert Group Meeting on the Rights of Older Persons*, p. 15.

<sup>106</sup>Bonn meeting, 2009, p. 14. *Id.* at 14.

<sup>107</sup>*Ageing and the Challenge of Non-Communicable Diseases in Low and Middle-Income Countries: A Position Paper*, HelpAge International, 3, (2009).

<sup>108</sup>Chung Working Paper, 2010. *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, *supra* note 132, 48.

<sup>109</sup>HelpAge International, *supra* note 135, at 5.

sixty and above.<sup>110</sup> Since the ICESCR does not explicitly refer to older persons, the CESCR drew its authority first from interpreting Article 9 of the ICESCR, “the right of everyone to social security, including social insurance,” to implicitly refer to the right to old-age benefits.<sup>111</sup> Secondly, the CESCR stated that since the ICESCR applies to all members of society, “it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant.” The CESCR then referred to the Vienna Plan for support.<sup>112</sup> Finally, the CESCR stated that special measures must be taken to protect the rights of older persons: “state parties are required by the Covenant to do so to the maximum of their available resources.”<sup>113</sup>

With regard to the protection of adults, the preamble of the Convention on the International Protection of Adults (“CIPA”)<sup>114</sup> stresses the need to provide for the protection in international situations of adults who, due to impairment or insufficiency of their personal faculties, are not in a position to protect their interests. CIPA’s goals include also determining the law applicable to representation of the adult and provide for the recognition and enforcement of such measures of protection. This convention represents an attempt to fill a gap for adults of all ages who are not otherwise provided for in existing legal mechanisms. Treatment of this issue is necessary. Future articulations of older persons’ rights will have to take into account the most recent and clearly articulated understanding of human rights and capacity in the International Convention on the Rights of Persons with Disabilities, and the impact it has in their full legal and practical recognition.

Article 3 of the CIPA lists the measures referred to in Article 1 that may deal in particular with issues such as (a) “the determination of incapacity and the institution of a protective regime,” and (b) “the placing of the adult under the protection of a judicial or administrative authority.” Institutionally within the United Nations, this has not been further articulated. However, future definitions of older persons’ rights will have to take into account the most recent and clearly articulated understanding of human rights and capacity in the International Convention on the Rights of Persons with Disabilities.

It is also worth noting that the Statement on Aging and the Rights of Older Persons<sup>115</sup> of the 62nd Commission on Human Rights noted that the recognition

<sup>110</sup>UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*, 9, U.N. Doc. E/1996/22 (Dec. 8, 1995), <http://www.refworld.org/docid/4538838f11.html>.

<sup>111</sup>*Id.* at 10.

<sup>112</sup>*See id.* 7 (describing other U.N.-sponsored activities related to ageing, including the Proclamation on Ageing and Vienna Plan).

<sup>113</sup>*See id.* 10 (noting that while neither of these instruments contain specific reference to discrimination, it is implicit that both of them apply regardless of age).

<sup>114</sup>Hague Conference on Private International Law. *Convention on the International Protection of Adults* (Jan. 13, 2000) [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=71](http://www.hcch.net/index_en.php?act=conventions.text&cid=71).

<sup>115</sup>U.N. Economic and Social Council, *N.G.O. Statement to the 62nd Session of the Commission on Human Rights* (2006) <http://www.un.org/esa/socdev/ageing/documents/StatementAgeingHRC06b.pdf>. (last visited Oct. 23, 2014).

of the legal rights of older persons would be necessary to mainstream aging as a visible issue and to, therefore, ensure adequate recognition of their rights before the law, both in the national and international level.

In April 2012, the High Commissioner for Human Rights concluded that “the paradigm shift towards supported decision-making provided for by Article 12 of the CRPD places autonomy and independence of the individual at the centre of this notion.”<sup>116</sup> In this report, one of the first issues related with this subject is that many older persons’ testimonies repeatedly note that they are treated as incompetent and without due consideration to decades of independent work, productive lives and autonomy. Recurrently, they point to degrading attitudes by caregivers, civil servants or relatives in which they are “treated like children” purely because they cannot walk, talk or react as quickly.”<sup>117</sup> These endemic social attitudes have a significant effect in preventing full recognition of their rights under the law. The 2009 Final Report of the Third Committee (“Final Report”) encouraged member states “to consider how best the international framework of norms and standards can ensure the full enjoyment of the rights of older persons.”<sup>118</sup> It is also recommended “that ongoing efforts to achieve the internationally agreed development goals, including those contained in the United Nations Millennium Declaration, take into account the situation of older persons.”<sup>119</sup> The report further called “states to develop their national capacity for monitoring and enforcing the rights of older persons through, inter alia, national institutions for the promotion and protection of human rights where applicable.”<sup>120</sup>

The Final Report also contained a request for the Secretary-General to submit a report to the General Assembly on “the status of the social situation, well-being, development and rights of older persons at the national and regional levels.”<sup>121</sup> It attempts to highlight how older persons are affected by invisibility in law and “soft law” mechanisms, such as the Millennium Declaration mentioned above. The related draft resolution confirms the key principles of the Final Report, including a request for the governments to prevent age discrimination and to “consider how best to improve international norms and standards pertaining to older persons.”<sup>122</sup> It called on “states to develop their national capacity for monitoring and enforcing

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<sup>116</sup>U.N. Economic and Social Council, *Report of the United Nations High Commissioner for Human Rights*, 21, U.N. Doc. A/HRC/19/21/Add.3 (Apr. 20, 2012), [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>117</sup>*Id.* at 22.

<sup>118</sup>Follow-Up to the Second World Assembly on Ageing, G.A. Res. 64/132, U.N. Doc. A/RES/64/132 (Feb. 5, 2010), <http://www.globalaging.org/agingwatch/GA/GAres64.pdf>.

<sup>119</sup>*Id.* at 22.

<sup>120</sup>*Id.* at 17.

<sup>121</sup>Follow-Up to the Second World Assembly on Ageing, G.A. Res. 64/132, at 3, U.N. Doc. A/RES/64/132 (Feb. 5, 2010) <http://www.globalaging.org/agingwatch/GA/GAres64.pdf>.

<sup>122</sup>U.N. General Assembly, A/RES/64/132; GA/SHC/3957 (Oct. 22 2009) available at <http://www.un.org/News/Press/docs/2009/gashc3957.doc.htm>; U.N. General Assembly, *Third Committee Approves Texts on Crime Congress, Cooperatives, Year of Family, Women’s Anti-Discrimination Convention, African Crime Institute, Ageing*, U.N. Doc. GA/SHC/3957 (Oct. 22, 2009).

the rights of older persons in consultation with all sectors of society, including with organizations of older persons.”<sup>123</sup> Likewise, it also included “the possibility of instituting new policies, instruments or measures to better improve the situation of older persons.”<sup>124</sup>

The Second World Assembly on Ageing requested the UN Secretary General to submit to the General Assembly a report on the implementation of the promotion and protection of human rights as they pertain to older persons.<sup>125</sup> The Assembly also encouraged states to pursue efforts to promote the concerns of older persons, persons with disabilities, and their organizations in the planning, implementing and evaluating of all development programs and policies.

In a special session in 2009, the HR Council encouraged governments to increase national activity on the rights of older persons in cooperation with the UN Regional Commissions.<sup>126</sup> Finally, the Report of the Secretary General on the follow-up to the Second World Assembly on Ageing requested the General Assembly to “call upon governments, organizations and bodies of the United Nations system and the non-governmental community to reinforce their advocacy campaigns aimed at informing all major societal actors, including older persons and their organizations, about the decisions taken at the Second World Assembly on Ageing.”<sup>127</sup>

## 2. *The Right to Freedom from Violence*

Several human rights treaties recognize the human rights to life, liberty, and security of person.<sup>128</sup> In this legal framework, older persons have the right to be free from all forms of abuse (physical, emotional, or financial, among others), as well as the right to enjoy the state’s protection from all forms of exploitation and marginalization. Abuse of older persons can take the form of physical abuse, which refers to the infliction of physical or psychological harm or injury, or sexual abuse,

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<sup>123</sup>Follow-Up to the Second World Assembly on Ageing, G.A. Res. 64/132, at 2, U.N. Doc. A/RES/64/132 (Feb. 5, 2010) available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/37/PDF/N0954737.pdf?OpenElement>.

<sup>124</sup>Id. at 2.

<sup>125</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, U.N. Doc. A/63/424, 11, (Dec. 2 2008) available at <http://www.undemocracy.com/A-63-424.pdf>.

<sup>126</sup>*Report of the Expert Group Meeting on the Rights of Older Persons*, 11 (May 5–7, 2009).

<sup>127</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, U.N. Doc. A/63/424 (Dec. 2, 2008); *Follow-up to the International Year of Older Persons: Second World Assembly on Ageing*, G.A. Res. 56/228, U.N. Doc. A/RES/56/228 (Feb. 28, 2002) <http://www.undemocracy.com/A-63-424.pdf>.

<sup>128</sup>UDHR, Art. 3; Convention on the Rights of the Child (CRC), Art. 2; CRPD, Art. 16.

in every country and every economic income bracket.<sup>129</sup> The United Nations General Assembly on the follow-up of the Second World Assembly on Ageing stressed that “Older women tend to be at most risk, as they live longer than men do and culturally are often more vulnerable to abuse.”<sup>130</sup>

The Toronto Declaration on the Global Prevention of Elder Abuse defines ‘elder abuse’ as “a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.”<sup>131</sup> The UN High Commissioner for Human Rights in the report submitted before the UN during the first months of 2012 determined that “the abuse of older persons may be physical, psychological, sexual and emotional.”<sup>132</sup>

Abuse committed against older persons is one of the most prevalent forms of abuse.<sup>133</sup> Elder abuse is “a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.”<sup>134</sup> Abuse, however, is not the only type of violence older persons face.

Many older men and women, especially older women, experience violence in their homes, in care settings, or in conflict or post-conflict situations.<sup>135</sup> On this issue, some authors have emphasized that elder abuse has only recently come to receive public attention. For instance, Peggy Kelly has stressed that “mistreatment of older persons violates their rights. The impact, consequences and costs of elder abuse, violence and neglect to societies and individuals may be considerable and have not been estimated, because of a lack of quantifiable data and information.”<sup>136</sup>

Harmful practices targeted specifically at older women and men, including violence because of superstition or witchcraft accusations and elder abuse, have not

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<sup>129</sup>U.N. Human Rights Council, *Agenda and Annual Programme of Work*, 11, U.N. Doc. A/HRC/4/121 (June 18, 2007).

<sup>130</sup>U.N. Secretary-General, *U.N. Department of Economic and Social Affairs Division for Social Policy and Development Programme on Ageing: Report of the Expert Group Meeting Rights of Older Persons*, 34 (2009).

<sup>131</sup>World Health Organization, *The Toronto Declaration on the Global Prevention of Elder Abuse*, 32 (2002), [http://www.who.int/ageing/projects/elder\\_abuse/alc\\_toronto\\_declaration\\_en.pdf](http://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf).

<sup>132</sup>[http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51). (last visited Oct. 23, 2014). U.N. Economic and Social Council, *Substantive Session of 2012: Report of the High Commissioner for Human Rights*, U.N. Doc. E/2012/51 (Apr. 20, 2012).

<sup>133</sup>U.N. Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Mission to the Netherlands*, at nos. 29, 40, 41, U.N. Doc. A/HRC/4/34/Add.4 (Feb. 7, 2007).

<sup>134</sup>P.6Bonn meeting, 2009, referencing WHO World Report on Violence and Health, 2002: at 126. Expert Group Meeting on the Rights of Older Persons, Bonn, Ger., May 5–7, 2009, *Report of the Expert Group Meeting on the Rights of Older Persons*, at 6 (referencing World Health Organization, *Report on Violence and Health*, at 126 (2002)).

<sup>135</sup>HelpAge Position Paper at 2.

<sup>136</sup>Kelly Report, *supra* note 30, at 10.

been adequately addressed.<sup>137</sup> The victims of accusations of witchcraft who suffer the most serious violence are invariably older women; the international community should highlight the abuse of older women, and they should receive targeted funding.<sup>138</sup> The section of this chapter on older women, below, highlights state cases of witchcraft allegations and subsequent murders, monitored by the CEDAW Committee.

The 2012 report of the UN High Commissioner for Human Rights pointed out that “the consequences of physical violence for older persons can be serious and they are more likely to require longer periods of recuperation even from minor injuries. Apart from causing severe and lasting emotional distress, physical violence is also a cause of premature mortality among older persons.”<sup>139</sup> Violence can cause irreparable harm.

In violent conflicts, older persons make up a disproportionate percentage of civilian casualties<sup>140</sup>; it is the recommendation of a group of special rapporteurs that the HR Council reiterate calls to end violence against civilians including older persons<sup>141</sup> in conflict areas.<sup>142</sup> One Special Rapporteur points out that in a conflict

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<sup>137</sup>HelpAge International, *supra*, at 4.

<sup>138</sup>U.N. Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Ghana* U.N. Doc. A/HRC/7/6/Add.3, at no. 65 and conclusion (Feb. 21, 2008); U.N. Human Rights Council, *Report of the Special Rapporteur on Violence Against Women: Its Causes and Consequences*, at no.123, U.N. Doc. A/HRC/11/6/Add.5 (May 27, 2009); Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: Addendum: Mission to the Central African Republic*, at no. 49., U.N. Doc. A/HRC/11/2/Add.3 (May 27, 2009).

<sup>139</sup>U.N. Economic and Social Council, *Substantive Session of 2012: Report of the High Commissioner for Human Rights*, 33, U.N. Doc. E/2012/51 (Apr. 20, 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>140</sup>U.N. Human Rights Council, *Report of the Independent Expert Appointed by the Secretary-General on the Situation of Human Rights in Somalia (Mr Ghanim Alnajjar)*, 18, U.N. Doc. A/HRC/7/26 (Mar. 17, 2008).

<sup>141</sup>U.N. Human Rights Council, *Report on the situation of human rights in Darfur prepared by a group composed of the special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the human rights defenders, the Representative of the Secretary-General on human rights internally displaced persons, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women: its causes and consequences*, at 11, U.N. Doc.A/HRC/5/6 (June 8, 2007), <http://www2.ohchr.org/english/bodies/hrcouncil/5session/reports.htm>.

<sup>142</sup>U.N. Human Rights Council, *Updated report on the situation of human rights in Darfur prepared by the United Nations Experts Group on Darfur, presided by the Special Rapporteur on the situation of human rights in Sudan and composed by the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the human rights defenders, the Representative of the Secretary-General on human rights internally displaced persons, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women: its causes and consequences*, U.N. Doc. A/HRC/6/7 (Sept. 22, 2007).



where half of all civilian casualties are children and older persons, the argument is strengthened that an occupying military operation, by its intrinsic nature, generates war crimes.<sup>143</sup>

Violence and abuse against elderly persons is a common issue for both developed and developing countries across the world.<sup>144</sup> The 2009 Final Report of the Third Committee specifically called upon the states to address “any cases of neglect, abuse and violence against older persons by designing more effective prevention strategies, stronger laws and policies to address these problems and their underlying factors.”<sup>145</sup> Further, it reaffirmed that violence, includes domestic violence against older persons and other vulnerable groups and indicated that it is increasingly a threat to individuals and their families as well as communities. The report also stated that such threat “presents compelling and urgent reasons for action by governments and individually to foster social cohesion while recognizing, protecting and valuing diversity.”<sup>146</sup>

The Final Report also called upon states to address “cases of neglect, abuse and violence against older persons, by designing more effective prevention strategies, and stronger laws and policies to address these problems and their underlying factors.”<sup>147</sup> The findings of the Final Report on violence against older persons were also reaffirmed in the Follow-up to the International Year of Older Persons: Second World Assembly on Ageing report issued by the Secretary General.<sup>148</sup> Further, according to the Report of the Secretary-General on the follow-up to the tenth anniversary of the International Year of the Family, states are supposed to implement policies for early detection, reporting and intervention in cases of abuse of older persons.<sup>149</sup> For example, the CEDAW Committee has taken note that Brazil’s Federal Constitution of 1988 establishes the duty of the State to suppress violence within the family, a common place where abuse of older persons takes place.<sup>150</sup>

In the Universal Periodical Review (“UPR”) process, the Malta’s Working Group Report reviewing states asked about the ongoing development of

<sup>143</sup>U.N. General Assembly, *Report of the Special Rapporteur on the Situation of human rights in the Palestinian territories occupied since 1967: note/by the Secretary-General*, at no. 23, U.N. Doc. A/HRC/10/20(Feb. 11, 2009).

<sup>144</sup>U.N. Human Rights Council, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, 11, U.N. Doc. A/HRC/AC/4/CRP.1 (Chinsung Chun 2009).

<sup>145</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, at 10, U.N. Doc. A/64/432 (Dec. 1, 2009) <http://www.copac.coop/iyc/a-64-432-excerpt.pdf>.

<sup>146</sup>*Id.* at 17.

<sup>147</sup>*Id.* at 2.

<sup>148</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, U.N. Doc. A/63/424 (Dec. 2, 2008) <http://www.undemocracy.com/A-63-424.pdf>.

<sup>149</sup>U.N. Secretary-General, *Report on the Follow-Up to the Tenth Anniversary of the International Year of the Family*, U.N. Doc. A/64/134 (Feb. 1, 2010). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/402/16/PDF/N0940216.pdf?OpenElement>.

<sup>150</sup>U.N. General Assembly, *Report of CEDAW on its 28th Session*, at 93 92, U.N. Doc. A/58/38 (2003).

community-based services for older persons and the policy to increase awareness and understanding of what constitutes abuse and how to prevent it.<sup>151</sup> States often highlight the importance of combating violence, particularly against vulnerable groups. For example, Argentina, Kazakhstan, and the UK all noted the need for increased actions to solve the problems of violence against vulnerable groups in Slovakia.<sup>152</sup> Also, the HR Council noted that “the vulnerable situation of elderly persons placed in long-term care, which in some instances has resulted in degrading treatment and violated their right to human dignity.” Therefore, it passed on to call upon the state “to pursue its efforts to improve the situation of elderly persons in nursing homes.”<sup>153</sup>

### 3. *The Right to Equality and Non-discrimination*

Every human has inalienable rights regardless of their age.<sup>154</sup> However, the non-discrimination clauses in international law rarely specify age as a prohibited ground for discrimination. While human rights law prohibits discrimination on several grounds, age could be argued to be included in the phrase “and other status.”<sup>155</sup> Some of this is a result of ageism. One definition of ageism is “a systematic stereotyping and discrimination against persons because they are old. Sometimes ageism is compared to sexism or racism because it discriminates against all members of a particular group.”<sup>156</sup> The principles of equality and non-discrimination require taking special measures to protect segments of society with a history of discrimination as a matter of priority.<sup>157</sup> Clearly, as it was highlighted

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<sup>151</sup>U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Malta*, U.N. Doc. A/HRC/12/7, A/HRC/WG.6/5/L.6 (June 4, 2009).

<sup>152</sup>U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Slovakia*, U.N. Doc. A/HRC/12/17, A/HRC/WG.6/5/L.16 (June 5, 2009).

<sup>153</sup>U.N. General Assembly, *Report of the Human Rights Committee-Germany*, at 39 68(17), U.N. Doc. A/59/40 vol. I (2004).

<sup>154</sup>See e.g., the Universal Declaration of Human Rights (UDHR), <http://www.un.org/en/documents/udhr/>, Article 2; Convention on the Rights of Persons with Disabilities(CRPD), Article 5; International Covenant on Civil and Political Rights(I CCPR), Article 2.

<sup>155</sup>Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* 4 (2009).

<sup>156</sup>Kelly Report, *supra* note 30, at 8.

<sup>157</sup>U.N Human Rights Council, *Report of Independent Expert on human rights and extreme poverty, Rapporteur: “To collect information to prepare this report the independent expert sent a questionnaire to Governments requesting information on their social pensions for older persons. The questionnaire addressed: (i) the legal and institutional framework; (ii) the schemes costs and coverage; (iii) implementation procedures; (iv) monitoring mechanisms and complaints procedures; and (v) studies and evaluations”*, 58 (Magdalena Sepulveda 2010)(hereinafter “Sepulveda Report”).

in the report of Report of the Expert Group Meeting on the “Rights of Older Persons” “discrimination, neglect and abuse are a daily feature in the lives of many older persons.”<sup>158</sup>

The right to equality before the law and the principle of non-discrimination are universal human rights foundations enshrined in Articles 1 and 2 of the UDHR that states that all human beings are “born equal in dignity and rights” and “everyone is entitled to the same rights and freedoms without distinction of any kind”, including distinctions based on “other status.” Article 26 of ICCPR further links these two principles, stating that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.” Theoretically, this should include “other status”.

The ICCPR states that distinctions of “other status,” such as age, are outlawed. It further requires in its Article 2 that the state parties “respect and ensure the rights recognized therein to all individuals within its territory and subject to its jurisdiction.”<sup>159</sup> The ICCPR also lists non-derogable rights even in times of public emergency, which is of particular relevance to older persons, who are often more vulnerable in such situations. In Article 4, it establishes that even “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed ... the state parties... may take measures derogating from their obligations under the ICCPR to the extent strictly required by the exigencies of the situation” and they cannot “involve discrimination solely on the ground of race, color, sex, language, religion or social origin.”<sup>160</sup>

This group-based or “vulnerable group” approach is applicable in the context of civil and political, as well as economic, social, and cultural rights. Culture and tradition may influence the extent to which older persons are discriminated against in daily life.<sup>161</sup>

Equal treatment is important for all people.<sup>162</sup> In relation to government programs, older persons are often “denied equity in opportunities available to them and in resources allocated to them.”<sup>163</sup> In its General Comment No. 6, the CESCR highlighted that when the ICESCR came to life “the problem of demographic aging

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<sup>158</sup>Bonn meeting, 2009, at 15.

<sup>159</sup>ICCPR, Art. 1.

<sup>160</sup>ICCPR, No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.

<sup>161</sup>Kelly Report, *supra* note 30, at 6.

<sup>162</sup>UN Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène: addendum: mission to Lithuania*, U.N. Doc. A/HRC/7/19/Add.4 (Feb. 7, 2008).

<sup>163</sup>Committee on Economic, Social and Cultural Rights, *General comment No. 6: The economic, social and cultural rights of older persons*, U.N. Doc. E/1996/22 (1996) <http://dfasuoimi.stakes.fi/NR/rdonlyres/ABF1AF26-5D33-458A-ABAD-3E4E284FD85D/0/Sidorenko.pdf>. (last visited Oct. 23, 2014).

was not as evident or as pressing as it is now” being that the reason for the omission of age as a prohibited ground for discrimination. However, CESCR concluded that “the prohibition of discrimination on the grounds of ‘other status’ could be interpreted as applying to age.” The Committee further stated “that while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited.”<sup>164</sup> Protection from age discrimination although not thoroughly espoused by human rights treaty texts can nonetheless be implicitly construed as a reality and a basic human right. It also has grounding in soft law documents such as the UN Principles for Older Persons and MIPAA.<sup>165</sup>

Additionally, the HRC stated in its General Comment No. 18 that the grounds for discrimination are not limited to those expressly mentioned in the ICCPR.<sup>166</sup> In litigation of the right to non-discrimination, the HRC has applied the right to equal protection under Article 26 of the ICCPR to economic, social and cultural rights. In *Brooks v. Netherlands*, the HRC stated that the scope of Article 26 extends to prohibit discrimination in law and in practice in any field regulated and protected by public authorities.<sup>167</sup> In this case, the petitioner claimed that her right to equality before the law under Article 26 was violated on the ground of sex and “other status” when her social security benefits, awarded on the basis of disability, were suspended.<sup>168</sup> According to domestic legislation, disability benefits were ensured only to married women who were “breadwinners” or separated from their husbands.<sup>169</sup> Since the petitioner did not fit either of these categories, her social security benefits were cut off after a period of time. The immediacy of the need for social security benefits in old age or with disability was not addressed. This case has served as an important precedent for subsequent complaints submitted to the HRC, arguing for the rights of older persons to social security protection without discrimination.<sup>170</sup>

Discrimination in the Netherlands was addressed in another HRC complaint, *Schmitz-de-Jong v. Netherlands*,<sup>171</sup> the HRC found “that the age limitation of allowing only partners who have reached the age of 60 years to obtain an entitlement to various rate reductions as a partner to a pensioner above the age of

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<sup>164</sup>Id. at 4.

<sup>165</sup>Id. at 4.

<sup>166</sup>UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, at 26, U.N. Doc. HRI/GEN/1/Rev.1 (Nov. 10, 1989).

<sup>167</sup>*Brooks v. Netherlands*, U.N. GAOR Hm. Rts. Comm., 39th Sess., Supp. No. 40, U.N. Doc. A/42/40 (1987), <http://www1.umn.edu/humanrts/undocs/session42/172-1984.htm>.

<sup>168</sup>*See id.* 2.3 (providing the basis for petitioner’s claim).

<sup>169</sup>*See id.* 8.2.

<sup>170</sup>*See, e.g., S.B. v. New Zealand*, U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/C/50/D/475/1991 (1994) (finding that New Zealand and the United Kingdom violated Article 26 of the covenant), <http://www1.umn.edu/humanrts/undocs/html/dec475.htm>.

<sup>171</sup>*Schmitz-de-Jong v. Netherlands*, Hm. Rts. Comm., U.N. Doc. CCPR/C/72/D/855/1999 (1999), [http://www.bayefsky.com/pdf/170\\_netherlands855.pdf](http://www.bayefsky.com/pdf/170_netherlands855.pdf).

65 years is an objective criterion of differentiation... and not unreasonable.”<sup>172</sup> Such decisions could pave the way for future discrimination against older persons based on age alone or in combination with other factors.

In the UPR process, India’s Working Group Report commended its effective implementation of various policies to promote equality and justice as well as its affirmative action programs to address the situation of marginalized communities and support older persons. This support does not recognize older persons as rights holders. Peer review also praised the exemplary role of the National Human Rights Commission in India and asked the institution’s experience to be shared with other countries as a best practice.<sup>173</sup> Such an institution could play a larger role in pushing for equal recognition of older persons’ rights.

Likewise, the Philippines’ Working Group Report positively commented on that country’s constitutional provisions, which ensure the fundamental principle of equality before the law for all, including the rights of older persons, among others.<sup>174</sup> Poland’s Working Group Report highlighted the need to raise awareness of various forms of discrimination and prejudice towards older persons, and to sensitize the society to manifestations of discrimination towards these groups, which include older persons.<sup>175</sup>

Regarding ageism, the United Kingdom mentioned in the UPR process that it has introduced regulations prohibiting age discrimination in the workplace and it is currently examining the possibility of prohibiting age discrimination in the provision of goods, facilities, and services and in the exercise of public functions. The United Kingdom also recognized that harmful age discrimination largely exists in a few sectors, including in the health and social sector and to a lesser extent the financial sector.<sup>176</sup>

The UPR report on Finland found a shortage of information and research on discrimination. It noted that effective anti-discrimination policy and sufficient support systems and prevention programs must be based on adequate information on discrimination in society. It further noted a particular shortage of information and research on the special needs of elderly lesbian, gay, bisexual, and transgender (LGBT) persons and the prevalence of multiple, intersecting forms of discrimination.<sup>177</sup>

The 2009 Final Report of the Third Committee also called upon states to “eliminate and address discrimination on the basis of age and gender,” and

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<sup>172</sup>Id.; ICCPR at 165 2.1, 2.2, 3, 7.2.

<sup>173</sup>U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review of India: Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India*, U.N. Doc. A/HRC/8/26 (Aug. 25, 2008).

<sup>174</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - The Philippines*, U.N. Doc. A/HRC/8/28; A/HRC/WG.6/1/PHL/4 (May 23, 2008).

<sup>175</sup>A/HRC/8/30, 23 May 2008, Par. 8. *Id.* 8.

<sup>176</sup>Id. at 11.

<sup>177</sup>UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Brunei Darussalam*, U.N. Doc. A/HRC/WG.6/1/FIN/3 (Mar. 6, 2008).

recommended to “engage with all sectors of society, including women’s groups and organizations of older persons” in order to change “negative stereotypes about older persons, in particular older women, and promote positive images of older persons.”<sup>178</sup> The report also reaffirmed that “social integration policies should seek to reduce inequalities, promote access to basic social services,” increase the participation on equal terms and “integration of social groups, particularly... older persons and persons with disabilities.”<sup>179</sup>

Finally, according to the Follow-Up to the Second World Assembly on Ageing Report of the Secretary General in 2012 (A/67/188), older persons face discrimination not just from society in general, but they may also face employers’ negative perceptions. They are discriminated because of the “age limits, the penalties and denials of services imposed by insurance service providers and financial institutions; preconceived notions and negative attitudes on the part of medical staff and rationing of health care.”<sup>180</sup> The aforementioned is a consequence of the general perception that “ageism rests on the assumption that neglect of and discrimination against older persons is the norm and acceptable.”<sup>181</sup>

#### ***4. The Right to Freedom from Cruel, Inhuman or Degrading Treatment or Punishment***

Article 5 of the UDHR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Similarly, according to Article 7 of the ICCPR, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” including, “without his free consent, to medical or scientific experimentation.” In General Comment No. 20 on Article 7 about the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, the Human Rights Committee stated that “special protection in regard to ... experiments is necessary in the case of persons not capable of giving their consent.” “More attention should be given to the possible need and means to ensure the observance of this provision.”<sup>182</sup>

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<sup>178</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, at 17, U.N. Doc. A/64/432 (Dec. 1, 2009) <http://www.copac.coop/iyca-64-432-excerpt.pdf>.

<sup>179</sup>Id. at 44.

<sup>180</sup>U.N. General Assembly, *Follow-Up to the Second World Assembly on Ageing: Report of the Secretary-General*, 57, U.N. Doc. A/67/188 (July, 26 2012) [http://social.un.org/ageing-working-group/documents/A\\_67\\_188\\_E.pdf](http://social.un.org/ageing-working-group/documents/A_67_188_E.pdf).

<sup>181</sup>Id. at 59.

<sup>182</sup>Torture or Cruel, Inhuman or Degrading Treatment or Punishment: General Comment 7, U.N. GAOR, Hum. Rts. Comm., 16th Sess., 7, U.N. Doc. HRI/GEN/1/Rev.1 (1994); *See also*, Javier Vasquez, Pan American Health Organization, Human Rights & Health: Older Persons at 1, (2008) available at [http://www.paho.org/englisH/dd/Pub/10069\\_OlderPersons.pdf](http://www.paho.org/englisH/dd/Pub/10069_OlderPersons.pdf). (last visited Oct. 23, 2014).

In the Second Working Session of the UN Open-Ended Working Group on Ageing held on the August 2011 the Chair of the United Nations Committee against Torture emphasized that “the definition of torture takes into account the particular circumstances of an individual, including their health conditions and age. It is the duty of States to investigate and punish any conduct that can amount to inhuman or degrading treatment, conducting in places like psychiatric institutions or prisons where older persons may not be able to take action to protect themselves.”<sup>183</sup>

The right to be free from torture enjoys in-depth protection thanks to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”),<sup>184</sup> which is entirely dedicated to the topic. The CAT defines torture within the framework of the instrument as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>185</sup>

Likewise, Article 10 establishes the state’s duty to “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”<sup>186</sup> Article 16 further expands the scope by obliging the state parties to “undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1.” This may be particularly relevant for older persons in situations of vulnerability to inhuman or degrading treatment by non-state actors. Where the state has reason to know of the treatment, it has a duty to implement actions to prevent it. Its treaty body, the Committee Against Torture (“CAT Committee”), refines the meaning of the provisions through its general comments and individual complaint mechanism.

As dependency increases with age, many older persons become increasingly vulnerable to abuse and exploitation in residential care facilities and in families. The HRC, for example, noted “the vulnerable situation of elderly persons placed in long-term care homes, which in some instances has resulted in degrading

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<sup>183</sup>Report of the Open-ended Working Group on Ageing for the Purpose of Strengthening the Protection of the Human Rights of Older Persons, G.A. Res. 65/182, U.N. Doc. A/Res/65/182 (Aug. 4, 2011) [http://social.un.org/ageing-working-group/documents/Chair\\_summary\\_2nd\\_session\\_OEWG\\_final.pdf](http://social.un.org/ageing-working-group/documents/Chair_summary_2nd_session_OEWG_final.pdf).

<sup>184</sup>See ICCPR, Art. 7 (commenting that individuals should not be subjected to torture or cruel punishment and stating that people should not be forced to participate in medical or scientific experiments without their consent).

<sup>185</sup>*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 39/46, art. 1, U.N. Doc. A/39/51 (June 26, 1987), *hereinafter* UNCAT.

<sup>186</sup>*Id.*, Art. 10.



treatment and violated their right to human dignity and asked states to pursue its efforts to improve the situation of elderly persons in nursing homes.”<sup>187</sup> Responsibility can be imputed to the state by its failure to hold private actors accountable and enacting domestic legislation that will preclude private actors from violating such rights of older persons, such as the responsibility Brazil has taken for preventing domestic violence.<sup>188</sup>

Where persons, including the more vulnerable older persons, are subjected to any form of arrest, detention or imprisonment, state parties “are to review interrogation rules, instructions, methods and practices” on a continual basis, “as well as arrangements for the custody and treatment” of them.<sup>189</sup> The CAT also sets basic procedural standards in its Article 13 when it calls upon state parties to “ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”<sup>190</sup>

The CAT and other human rights mechanisms have spoken forcefully against the abuse of older persons. The Special Adviser on the Human Rights situation in Myanmar requested the prioritization of the release of elderly political prisoners on humanitarian grounds.<sup>191</sup> The release of non-violent offenders from confinement in pretrial detention should also be expedited, he noted, beginning with older persons.<sup>192</sup> He further recommended that elderly prisoners be given priority release.<sup>193</sup>

In the case of Chile, the CAT further condemned the commission of abusive acts by police officers against members of indigenous peoples, especially members of the Mapuche tribe, and in particular when the victims of these acts include older persons.<sup>194</sup> The CAT asked Chile to carry out prompt investigations into these allegations.<sup>195</sup>

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<sup>187</sup>U.N. General Assembly, *Report of the Human Rights Committee-Germany*, at 39 68(17), U.N. Doc. A/59/40 vol. I (2004).

<sup>188</sup>*See, e.g.* U.N. Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Brazil*, at 93 92, U.N. Doc., A/58/38 part II (Nov. 7, 2002). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/468/20/PDF/N0346820.pdf?OpenElement>.

<sup>189</sup>UNCAT Art. 11.

<sup>190</sup>*Id.*, Art. 14.

<sup>191</sup>U.N. General Assembly, *Situation of Human Rights in Myanmar: Report of the Secretary-General*, at no. 31., U.N. Doc. A/63/356 (Sept. 17, 2008).

<sup>192</sup>UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: addendum: mission to Nigeria (4 to 10 March 2007)*, at 45 and 100., U.N. Doc. A/HRC/7/3/Add.4 (Nov. 22, 2007).

<sup>193</sup>U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, at no. 95, U.N. Doc. A/HRC/10/19 (Mar. 11, 2009).

<sup>194</sup>U.N. Committee Against Torture, *Concluding Observations on Chile*, U.N. Doc. CAT/C/CHL/CO/5 (June 23, 2009) available at <http://acnudh.org/wp-content/uploads/2011/01/CAT-Chile-2009-ENGLISH.pdf>.

<sup>195</sup>*Id.*

In the context of the UPR process, a non-governmental organization, INREDH, reported in Ecuador's Working Group Report that a lack of application of norms protecting older persons represents a serious human rights violation in the context of the criminal justice system in that country.<sup>196</sup> In the Russian Federation's Working Group Report, the delegation recognized that domestic violence is a problem that affects older persons.<sup>197</sup>

The 2009 Final Report of the Third Committee called upon Member States to address "any cases of neglect, abuse and violence against older persons, by designing more effective prevention strategies, stronger laws."<sup>198</sup> In the Note by the Secretary-General transmitting the interim report of the Special Rapporteur on the situation of human rights in Myanmar, the Special Rapporteur positively noted that in 2005, the International Committee of the Red Cross continued to monitor the treatment and living conditions of persons in need of particular protection, such as the elderly.<sup>199</sup>

Finally, the Report of the High Commissioner for Human Rights of the UN, concluded that "the realization by older persons of the right to liberty and security of person, the right to privacy, freedom of movement, freedom of expression, freedom from torture and other cruel, inhuman and degrading treatment, the right to personal integrity, the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health, among others, are common but have often not been adequately regulated."<sup>200</sup>

## 5. *The Right to Life*

According to Article 3 of the UDHR, "everyone has the right to life, liberty and security of person."<sup>201</sup> Similarly, Article 6 of the ICCPR states that "every person has the inherent right to life"... "protected by law" and "shall not be arbitrarily deprived of life." The ICCPR does not restrict capital punishment with respect to older persons.

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<sup>196</sup>U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review—Ecuador*, 22, U.N. Doc. A/HRC/WG.6/1/ECU/3 (Mar. 6, 2008) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/113/10/PDF/G0811310.pdf?OpenElement>.

<sup>197</sup>U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Russian Federation*, U.N. Doc. A/HRC/11/19 (Mar. 3, 2009).

<sup>198</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, at 10, U.N. Doc. A/64/432 (Dec. 1, 2009) <http://www.copac.coop/iy/a-64-432-excerpt.pdf>.

<sup>199</sup>U.N. General Assembly, *Situation of Human Rights in Myanmar*, U.N. Doc. A/60/221 (Aug. 12, 2005).

<sup>200</sup>U.N. Economic and Social Council, *Substantive Session of 2012: Report of the High Commissioner for Human Rights*, 23, U.N. Doc. E/2012/51 (Apr. 20, 2012), [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>201</sup>UDHR at art. 3.

According to HRC General Comment No. 6, the right to life is a right that should be broadly interpreted, and includes all possible measures to increase life expectancy, giving older persons an enforceable right to government protection and positive measures to prolong lives. It reminded that “the HRC has noted that the right to life has been too often narrowly interpreted.” In relation with the expression “inherent right to life,” it sustained that it is to be interpreted broadly, and the protection of this right requires that States adopt positive measures to protect lives in all stages of the life course. In another broader interpretation of the right to life, the HRC has considered that it would be desirable for state parties to take all possible measures to increase life expectancy.<sup>202</sup>

The HRC noted the U.S. Government’s failure to protect the right to life during the Hurricane Katrina emergency, establishing that residents trapped in nursing homes and hospitals were especially endangered.<sup>203</sup> The ongoing violence and murder surrounding witchcraft allegations, detailed above in the Right to Freedom from Violence, is situation where states have a duty to intervene to protect the right to life of older women.

The August 2012 third working session of the UN Open-Ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons, recognized that the situation of older persons has clearly degraded from older persons being respected and recognized by their communities to increased abuse and violence, especially for older women.<sup>204</sup>

According to the fiftieth session of the Commission for Social Development related with second review and appraisal of the Madrid International Plan of Action on Ageing, held in February 2012, there are numerous cases of older women being accused of witchcraft and subjected to violence and murder reported by civil society and the media across sub-Saharan Africa.<sup>205</sup> Ghana, which currently houses six refugee camps for older women fleeing such violence, is currently undertaking efforts to reintegrate older women into communities.<sup>206</sup> The government has a duty to ensure that its actions do not endanger the lives of the older women it is seeking to disperse.

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<sup>202</sup>U.N. Human Rights Committee, *General Comment No. 6: The Right to Life*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Apr. 30, 1982).

<sup>203</sup>Report Submitted to the 87th Session of the Human Rights Committee: U.N. Human Rights Committee, *Hurricane Katrina and Violations of ICCPR Articles 6 and 26: A Response to the Third Periodic Report of the United States of America (Submitted by the U.S. Human Rights Network to the 87th Session)* (Jean M. Carmault, 2006), <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/USHRN.pdf>.

<sup>204</sup>U.N. Open-Ended Working Group on Ageing, *Summary of the 3rd Working Session*, 27 (Aug. 21–24, 2012), <http://social.un.org/ageing-working-group/documents/Chairsummary3rdsessionOEWGfinal.pdf>.

<sup>205</sup>Id. at 13.

<sup>206</sup><http://www.theafricareport.com/index.php/society-and-culture/witches-camps-in-ghana-to-be-disbanded-50176642.html>. (last visited Oct. 23, 2014). Dasmani Laary, *Ghana Shuts Down Witches' Camp*, The Africa Report, (Dec. 19, 2014) <http://www.theafricareport.com/Society-and-Culture/ghana-shuts-down-witches-camp.html>.

## 6. *The Right to Liberty and Security*

Pursuant to Article 9 of the ICCPR, everyone has the right to liberty and security; “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”, and arbitrary arrest or detention is prohibited.

The ICCPR establishes that “persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.”<sup>207</sup> For older persons, this is an important protection for those in state and private long-term care facilities, and living with other forms of institutionalization. One’s liberty is directly affected by legal capacity, defined as “the right to access the civil and juridical system and the legal independence to speak on one’s own behalf.”<sup>208</sup> The Convention on the Rights of Persons with Disabilities (“CRPD”) outlines that the right to make choices freely is not contingent on legal capacity; it influences how much support is needed to exercise one’s rights.<sup>209</sup>

The ICCPR also states in its Article 12 that “everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”<sup>210</sup> A further right related to the protection of liberty and security is the right to fair trial as enshrined in Article 11 of the UDHR. This requires procedural due process for restrictions of liberty in advance of a criminal trial, regardless of age or other status. For older persons, procedural due process may include a balancing of the detriment of detention on an older person’s health, versus the risk of flight pending a trial, for example.

In the UPR process, a reviewing state in Ecuador’s Working Group Report noted that older persons represent an important segment of the population and asked what kind of measures Ecuador was taking to ensure their enjoyment of basic rights.<sup>211</sup> Concerning the social and economic inclusion of older persons, the report noted that Ecuador has developed a new system and training programs for community-based services, in particular together with private sector institutions, carrying out comprehensive care programs through homes for older persons deprived of liberty.<sup>212</sup> Such questioning, and such initiatives are necessary both for the well-being of older persons and their enjoyment of the full panoply of rights.

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<sup>207</sup>ICCPR at Art. 10.

<sup>208</sup>*Explanatory Note on Legal Capacity and Forced Interventions*, <http://www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8idc1218ex.doc>. (last visited Oct. 23, 2014). International Disability Caucus, *Explanatory Note on Legal Capacity and Forced Interventions* (2014), <http://www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8idc1218ex.doc>.

<sup>209</sup>Convention on the Rights of Persons with Disabilities, at Art. 12.2.

<sup>210</sup>Article 12, ICCPR. ICCPR at Art. 12.

<sup>211</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Ecuador*, A/HRC/8/20; A/HRC/WG.6/1/ECU/4, 35 (May 13 2008) available at: <http://www.refworld.org/docid/4857aa1d0.html>. U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Ecuador*, 35, U.N. Doc. A/HRC/WG.6/1/ECU/3 (Mar. 6, 2008).

<sup>212</sup>*Id.* at 53.

Another interesting example is the position of Finland during the UPR process in 2012. In its report, Finland indicated that “the Parliamentary Ombudsman of that nation has repeatedly raised the issue of the rights and treatment of persons deprived of their freedom, and of persons who are subject to restraining measures.” Likewise, it affirmed that:

legislation on the requirements for deprivation of liberty or on the use of force or restraint in this connection is either inadequate or there are no legal norms on the issue at all in certain situations. There is no legislative basis for the use of coercive measures in caring for the elderly. The use of force in caring for persons with disabilities is based on a single provision that does not provide for judicial control of restraining measures. It has been observed that the instructions of psychiatric hospital wards do not always respect a principle known as the ban on institutional authority. This ban forbids any restriction of the rights of patients based on internal ward norms, and restrictions must instead be based in law and applied on the basis of individual discretion.<sup>213</sup>

## 7. *The Right to Respect for Home and Family*

General human rights law includes a number of provisions for the environment of the home and family. Article 23 of the ICCPR establishes that “the family is the natural and fundamental group unit of society and is entitled to protection,” including that “the right of men and women of marriageable age to marry and to found a family shall be recognized.” States are expected “to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”<sup>214</sup>

Article 10 of the ICESCR provides that with regard to the family, states are to “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. The CESCR encouraged states to support, protect, and strengthen the family because many cultures believe that the family unit must provide care for older persons.”<sup>215</sup> It also suggested that those elderly persons who prefer to stay at home should not be discriminated against, and

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<sup>213</sup>UN Human Rights Council, *Summary: [Universal Periodic Review]: Finland/ prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/13/FIN/3* (Mar. 9 2012), available at <http://www.refworld.org/docid/5007e1b72.html>. U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review–Finland, 149, U.N. Doc. A/HRC/WG.6/13/FIN/3 (Mar. 9, 2012).

<sup>214</sup>ICCPR at Art. 23.

<sup>215</sup>*See* General Comment 6, para. 31 (stating that Recommendation 29 encourages governments and non-governmental organizations to implement social service programs to support the whole family). U.N. Human Rights Committee, *General Comment No. 6: The Right to Life*, 31, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Apr. 30, 1982)(stating that Recommendation 29 encourages governments and non-governmental organizations to implement social service programs to support the whole family).

should be provided for through services from both government and non-governmental agencies. The CESCR further suggested that states provide financial support to family members caring for older persons at home, particularly poor families. States should also provide financial and logistical assistance to older persons living alone and to elderly couples who prefer to stay in their own home. The assistance should include transportation, food delivery, nursing care, and doctors' visits. In sum, the state should encourage the cultural decision to keep the family unit together. Resources that might be spent building nursing homes should instead be spent on compensating families for caring for their elderly relatives at home.

In the UPR process, Malaysia's Working Group Report noted the government's pledge that it would also be undertaking greater efforts to ensure that the role of the family as the basic stabilizing and care agent for young and older persons is maintained.<sup>216</sup>

Further, the 2009 Final Report of the Third Committee recognized the importance of strengthening intergenerational partnerships and solidarity among generations and called upon the member states to promote opportunities for interaction between young persons and older generations in the family, the workplace and society.<sup>217</sup>

## 8. *The Right to Information, Association and Participation*

Many international human rights instruments embody the guarantee to information, association and participation by preserving rights to expression, association and participation in cultural life as Article 15 of the ICESCR. Information is often not available in a form that is suitable and accessible to older people,<sup>218</sup> which can make meaningful participation in society impossible.

The scope and status of the right is also outlined in general terms in the primary instruments of the International Bill of Rights. Article 27 of the UDHR elaborates that "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."<sup>219</sup> The International Bill of Rights includes a number of provisions that establish the rights to association and participation. Article 20 of the UDHR guarantees the right of everyone to freedom of peaceful assembly and association. Furthermore, Article 21 of the ICCPR states that "no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law."

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<sup>216</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Malaysia*, A/HRC/WG.6/4/L.16; A/HRC/11/30, 102 (Mar. 3 2009), available at <http://www.refworld.org/docid/49f964f10.html>. U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Malaysia*, 102, U.N. Doc. A/HRC/11/30 (Mar. 3, 2009).

<sup>217</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, at 4, U.N. Doc. A/64/432 (Dec. 1, 2009) <http://www.copac.coop/iyca-64-432-excerpt.pdf>.

<sup>218</sup>HelpAge International, *supra*, at 3.

<sup>219</sup>Cross-reference to the ICESCR Art. 15.

Additionally, Article 8 of the ICESCR establishes the right to labor organization without state interference as the “state parties undertake to ensure the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.” So far, no such organization of labor has taken up the issue of the human rights of its aging members.

Furthermore Article 25 of the ICCPR stipulates that “every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: to take part in the conduct of public affairs either directly or through freely chosen representatives.” General Comment No. 25 supports the principle that each person’s vote should be equal to each other person’s vote.<sup>220</sup> An older person’s vote should in no way be diminished from a younger person’s vote. The General Comment also mentioned that, “the drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”<sup>221</sup> Where older persons are evenly dispersed within different electoral boundaries, this is not as much of a concern. In contrast, if older persons lived in a retirement community or institution, this would concentrate their numbers.

Older persons often lack avenues to participate in society, access information, and some may face barriers to free association. All of these rights require conscious efforts for inclusion.<sup>222</sup> A clear example of how access to information affects one’s legal rights is in the case of class action settlements.<sup>223</sup> Without access to information, a person might not know he or she is even eligible for a complaint. Exclusion often results from the negative stereotypes of older people.<sup>224</sup>

Exclusion can be exacerbated by physical barriers to participation. Article 2 of the CRPD defines, *inter alia*, “universal design” as “the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.”<sup>225</sup> States must

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<sup>220</sup>Human Rights Committee, General Comment 25 UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, CCPR/C/21/Rev.1/Add.7, (July 12 1996), available at <http://www.refworld.org/docid/453883fc22.html>.

<sup>221</sup>*Id.* 21.

<sup>222</sup>U.N. Human Rights Council, *Addendum to the Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Mission to Turkey*, at no. 45, U.N. Doc. A/HRC/4/26/Add.2 (Nov. 16, 2006).

<sup>223</sup>*Id.* at 20, 47.

<sup>224</sup>*Id.* pg. 7.

<sup>225</sup>General Assembly resolution 61/106, annex I. UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution/ adopted by the General Assembly*, A/RES/61/106, (Jan. 24 2007) available at <http://www.refworld.org/docid/45f973632.html>. *Convention on the Rights of Persons with Disabilities*, 2515 U.N.T.S. 3. (May 3, 2008).



create sanitation facilities designed to facilitate access to water and sanitation for everyone.<sup>226</sup>

One way that is appropriate for combatting exclusion of some older persons is through volunteering. The follow-up to the Second World Assembly on Ageing Report of the Secretary-General affirmed that, “at the individual level, volunteerism helps to keep older persons active and engaged.”<sup>227</sup> The Report of the Secretary-General on follow-up to the International Year of Volunteers<sup>228</sup> mentions older persons’ volunteer activities. According with the follow-up to the Second World Assembly on Ageing Report of the Secretary-General, “macro-level factors and general social conditions influence the readiness of older persons to engage in voluntary activities.”<sup>229</sup> Citing the case of Germany, the report showed that “the volunteerism rate of persons with an intermediate level of education was nine percent, while the rate rose to seventeen percent among persons with higher education.”<sup>230</sup>

One key aspect to ensure the fulfilment of many of their rights is the ability of older persons to adequately participate in the political system, and especially in issues that can directly affect them. This includes the possibility for them to participate in political movements or other social organizations through which they can be involved in the discussion of public affairs in their country.<sup>231</sup> Many older persons encounter problems while attempting to establish their legal identities due to the absence of identification documentation. As a result, they are unable to access services or speak out against objectionable public policies.<sup>232</sup>

The 2009 Final Report of the Third Committee also encouraged states to build national networks, including civil society organizations that can enhance the local capacity to confront challenges regarding the rights of older persons. The related draft resolution called upon member states “to develop their national capacity for monitoring and enforcing the rights of older persons, in consultation with, organizations of older persons through, inter alia, national institutions for the promotion

<sup>226</sup>U.N. Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation*, Catarina de Albuquerque, at no. 76, U.N. Doc. A/HRC/12/24 (July 1, 2009).

<sup>227</sup>U.N. General Assembly, Report of the Secretary General. 2012. A/67/188. Follow-up to the Second World Assembly on Ageing, 16, U.N. Doc. A/67/188 (July, 26 2012) available at [http://social.un.org/ageing-working-group/documents/A\\_67\\_188\\_E.pdf](http://social.un.org/ageing-working-group/documents/A_67_188_E.pdf).

<sup>228</sup>U.N. General Assembly, *Report of the Secretary-General on follow-up to the International Year of Volunteers*. U.N. Doc. A/60/128 (Aug. 30, 2005), [http://www.unv.org/fileadmin/docs/old/pdf/2005/050830INT\\_res\\_iyvffup.pdf](http://www.unv.org/fileadmin/docs/old/pdf/2005/050830INT_res_iyvffup.pdf).

<sup>229</sup>U.N. General Assembly, *Follow-Up to the Second World Assembly on Ageing: Report of the Secretary-General*, 18, U.N. Doc. A/67/188 (July, 26 2012) available at [http://social.un.org/ageing-working-group/documents/A\\_67\\_188\\_E.pdf](http://social.un.org/ageing-working-group/documents/A_67_188_E.pdf).

<sup>230</sup>*Id.*

<sup>231</sup>*Id.* 21(The General Assembly has recognizing that “in some countries, the high rate of voter turnout among older persons has helped to ensure that their concerns are addressed.”).

<sup>232</sup>*Id.* pg. 7–8 *Id.* at 7–8.

and protection of human rights where applicable.”<sup>233</sup> Furthermore, the report “encourages the international community to support national efforts to forge stronger partnerships with civil society, including organizations of older persons, in an effort to help build capacity on aging issues.”<sup>234</sup>

In the follow-up to the Second World Assembly on Ageing<sup>235</sup> and follow-up to the Tenth Anniversary of the International Year of the Family and Beyond,<sup>236</sup> participating states highlighted the ability of cooperatives in social development to contribute to poverty eradication by promoting the participation of older persons in the economy and in society.<sup>237</sup> The Assembly recognized that cooperatives, promoted the fullest possible participation of all persons in their economic and social development, including, inter alia, older people, and that they contributed to the eradication of poverty.

The Report of the Secretary-General on cooperatives in social development pointed out that “in many developed countries, retired older persons have organized to advocate for their own interests in public and private programs that affect them, as well as to provide personal advice and counsel for those within their own age group.”<sup>238</sup> It also referred to Switzerland indicating that, “cooperatives have programs to help members to assist older persons maintain and make use of their abilities.”<sup>239</sup> To address the demand created by the rapid aging of the rural population, agricultural cooperatives in Japan have expanded services for older members.”<sup>240</sup> Cooperatives can have a deleterious effect where some election techniques, including verification requirements, disproportionately disenfranchise older persons.”<sup>241</sup>

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<sup>233</sup>Follow-Up to the Second World Assembly on Ageing, G.A. Res. 64/132, 11, U.N. Doc. A/RES/64/132 (Feb. 5, 2010) <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/37/PDF/N0954737.pdf?OpenElement>.

<sup>234</sup>U.N. General Assembly, *Social Development: Report of the Third Committee*, 18, U.N. Doc. A/64/432 (Dec. 1, 2009) <http://www.copac.coop/iyc/a-64-432-excerpt.pdf>.

<sup>235</sup>Follow-Up to the Second World Assembly on Ageing, G.A. Res. 64/132, 11, U.N. Doc. A/RES/64/132 (Feb. 5, 2010). Press Release, U.N. General Assembly, Third Committee Approves Texts on Crime Congress, Cooperatives, Year of Family, Women’s Anti-Discrimination Convention, African Crime Institute and Ageing, U.N. Press Release GA/SHC/3957 (Oct. 22, 2009) available at <http://www.un.org/News/Press/docs/2009/gashc3957.doc.htm>.

<sup>236</sup>*Follow-up to the Tenth Anniversary of the International Year of the Family and Beyond*, G.A. Res. 64/133, U.N. Doc. A/RES/64/133 (Feb. 5, 2010) <http://www.un.org/News/Press/docs/2009/gashc3957.doc.htm>.

<sup>237</sup>U.N. General Assembly, *Argentina, Bangladesh, Guatemala, Mongolia, Myanmar, Nepal, Panama and Sudan: draft resolution: Cooperations in Social Development*, U.N. Doc. A/C.3/64/L.10 (Oct. 7, 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/92/PDF/N0954792.pdf?OpenElement>.

<sup>238</sup>U.N. General Assembly, *Cooperatives in Social Development: Report of the Secretary-General*, 34, U.N. Doc. A/60/138 (Oct. 7, 2009) <http://www.copac.coop/publications/un/a60138e.pdf>.

<sup>239</sup>*Id.*

<sup>240</sup>*Id.*

<sup>241</sup>U.N. General Assembly, *Report of the Third Committee. 59th Session: Human rights questions: human rights situations and reports of special rapporteurs and representatives*. U.N. Doc. A/59/503/Add.3 (Dec. 9, 2004).

## **D. Economic, Social and Cultural Rights of Older Persons**

### ***The Rights of Progressive Realization***

The rights of older persons are recognized in isolated provisions of international treaties that primarily protect economic, social and cultural rights (ESCR). Many of these rights are regarded as the rights of progressive realization whereby states, as primary duty-bearers, are bound to provide international economic and technical assistance - especially to developing countries - in order to enable and cooperate with states in fulfilling their human rights obligations.<sup>242</sup> This can create a perception that many rights of older persons are only programmatic aspirations without hard-and-fast standards. Even though many of the rights of older persons' in international human rights law have been identified as ESCR, they cannot be treated as a separate category of standards. Moreover, these rights can have obligations that require progressive realization and in many instances immediate enforceability.

Additionally, because older persons face obstacles to the full enjoyment of their rights due to age discrimination, they are often considered a disadvantaged or vulnerable group – a group that can and should be encompassed in the often repeated “any other status.” This can enhance the protection standards that states are required to ensure in order to comply with international human rights obligations. This doctrine imposes the obligations upon duty-bearers to treat older persons as a group that deserves special protection, which carries with it a higher duty. International human rights law has established the doctrine that vulnerable groups are entitled to special protection to ensure their enjoyment of human rights guaranteed to all persons. This doctrine is based on the principle of equality before the law as enshrined in international law, which can also provide legitimacy for ‘positive discrimination’ measures and policies based on affirmative actions.

### ***Interrelatedness of the Civil and Political Rights and Economic, Social and Cultural Rights***

The well-being of older persons is not only protected by the provisions and instruments that guarantee ECSR, but also by the norms whose primary purpose and definition is to guarantee civil and political rights. The right to a fair trial and the right to non-discrimination, for instance, are fundamental rights that can also be used to protect older persons from certain practices such as forced retirement

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<sup>242</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 45, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

or slow judicial proceedings regarding immediately necessary health or social benefits. Similarly, provisions prohibiting cruel and degrading treatment provide for specific protection of older persons who are confined in detention centres and prisons as well as health care facilities. In other instances, the pensions and social benefits that older persons receive from a state can be protected by the standards of the right to property and due process of law. Furthermore, all ESCR and civil and political rights are indivisible and interdependent from each other. Thus the protection of one right often allows for the implementation and protection of other types of rights. Civil and political rights and ESCR can also be immediately applicable and subject to judicial adjudication.

### ***Normative Framework of the General Comment No. 6 – the Economic, Social and Cultural Rights of Older Persons***

The CESCR summarized the responsibilities of member states toward the protection of older persons in its landmark *General Comment No. 6*, in which it declared that state parties to the ICESCR are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons.<sup>243</sup> The CESCR further established its own mandate to monitor the implementation of international protection for older persons, particularly since no international convention exists for their specific rights.<sup>244</sup>

The CESCR further reasoned the necessity for this approach in state reports issuing little information on the status of the rights of older persons.<sup>245</sup> The CESCR emphatically concluded that future state reports ought to address situations and circumstances of older persons in relation to each of the rights recognized in the ICESCR.<sup>246</sup>

Furthermore, *General Comment No. 6* notes that neither the ICESCR nor the UDHR explicitly prohibits age discrimination, but this should not be seen as an intentional normative omission by the international community with regard to the legal status of older persons.<sup>247</sup> In that regard, the CESCR stated that the prohibition of discrimination based on other status could include age.<sup>248</sup> The CESCR rationalized its conclusion by summarizing the numerous policy documents in international forums as well as domestic legislation that support this principle, as well as the need to eliminate age discrimination.

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<sup>243</sup>UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*, 13, U.N. Doc. E/1996/22 (Dec. 8, 1995).

<sup>244</sup>*Id.*

<sup>245</sup>*Id.* at paras. 14–15.

<sup>246</sup>*Id.*

<sup>247</sup>*Id.*

<sup>248</sup>*Id.* at para. 12.

## 1. *The Right to an Adequate Standard of Living*

Older persons are a particularly vulnerable group that is specially exposed to poverty and its consequences. Even in the wealthiest countries on earth that pride themselves on social protection in old age, older women have a poverty risk rate of about 22 percent and older men have a poverty risk rate of 16 percent.<sup>249</sup> Precise information about poverty in old age is difficult to ascertain. As the Independent Expert on Human Rights in Extreme Poverty has suggested, “weaker knowledge of the specificities of old-age poverty...most likely leads to policy choices that ignore and possibly exclude older persons living in extreme poverty.”<sup>250</sup>

The CESCR linked this right to the inherent dignity of all persons and pronounced its indispensability to the fulfillment of virtually every other right in the International Bill of Rights, including the ICCPR and ICESCR, among others.<sup>251</sup> Moreover, it has attached great importance to the right to an adequate standard of living, as it includes the right to “adequate food, water, shelter, clothing and health care through the provisions of income, family and community support and self-help.”<sup>252</sup> In addition, Article 25 of the UDHR sets the standard that requires states to ensure the “right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>253</sup>

An adequate standard of living encompasses many different aspects of life. As already mentioned, the CESCR has interpreted this to include several social and economic rights.<sup>254</sup> Article 10 of the ICESCR requires states to accord “the widest possible protection and assistance ...to the family, which is the natural and fundamental group unit society.”<sup>255</sup> As Lindsay Judge puts it “CESCR General Comment No. 6 also points to the need to support families in responding to the needs of older relatives. Specifically, it stresses the need for measures to support low-income families in caring for older persons as well as single persons or elderly couples who wish to remain in their homes.”<sup>256</sup>

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<sup>249</sup>“Sepulveda Report”, *supra*, 20.

<sup>250</sup>*Id.* 14.

<sup>251</sup>U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*, 32, U.N. Doc. E/1996/22 (Dec. 8, 1995)(describing how the right to adequate food is linked to human dignity and social justice).

<sup>252</sup>*See id.* 32 (referring to Principle 1 of the United Nations Principles for Older Persons).

<sup>253</sup>Universal Declaration of Human Rights, art. 25(1) (emphasizing that everyone has the right to “a standard of living adequate for the health and well-being of himself and of his family”).

<sup>254</sup>Diego Rodriguez-Pinzon and Claudia Martin, *The International Human Rights Status of Elderly Persons*, 18 Am. U. Int'l L. Rev. 915, 960 (2003).

<sup>255</sup>Lindsay Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* 7 (2009).

<sup>256</sup>*Id.* at pg. 7.

Access to the right to housing, for example, shows the complex interrelation that such a right has with other rights. According to the CESCR, the focus should not be on providing just shelter, but providing adequate housing, as the right to housing is intimately linked with other human rights.<sup>257</sup> For example, the CESCR linked the right to housing with freedom of expression and association, traditionally held as civil and political rights, and stated that the full implementation of these other rights is “indispensable if the right to adequate housing is to be realized.”<sup>258</sup>

On the other hand, the ICESCR has raised concerns regarding the standard of living of older persons in relation to the “extent of poverty among older persons and about the fact that home care is still insufficiently developed.”<sup>259</sup> In this vein, it recommended that Serbia and Montenegro “take special measures to alleviate the extent of poverty among older persons and that priority be given to home care rather than institutionalization of older persons in need of care, including to allocate sufficient funds to that effect and strengthen the role of non-profit organizations in the provision of home care and other social services.”<sup>260</sup> The right to adequate housing can be negatively impacted when older persons are involuntarily excluded from their communities.

The 2009 *Final Report of the Third Committee* encourages governments “to pay greater attention to building capacity to eradicate poverty among older persons, in particular older women, by mainstreaming aging issues into poverty eradication strategies and to include both age-specific policies and age-mainstreaming efforts in their national strategies.”<sup>261</sup> The report further called upon governments “to ensure conditions that enable families and communities to provide care and protection to persons as they age.”<sup>262</sup> Further, the draft resolution encouraged “the international community to enhance international cooperation to support national efforts to eradicate poverty, in order to achieve sustainable social and economic support for older persons.”<sup>263</sup>

<sup>257</sup>Id. at para. 7 (stating that, in the Committee’s view, “the right to housing should not be interpreted in a narrow or restrictive sense ... rather it should be seen as a right to live somewhere in security, peace and dignity”). General Comment 6, *supra* note 279, 7 (stating that, in the Committee’s view, “the right to housing should not be interpreted in a narrow or restrictive sense ... rather it should be seen as a right to live somewhere in security, peace and dignity”).

<sup>258</sup>Id. at para. 9.

<sup>259</sup>U.N. Econ. and Soc. Council Official Record, 2006. Supp. No. 2. Comm. on Econ., Soc., and Cultural Rights. Report on the 34th and 35th Sess., E/2006/22-E/C.12/2005/5. 288, [http://bayefsky.com/general/e\\_2006\\_22.pdf](http://bayefsky.com/general/e_2006_22.pdf) (last visited Oct. 23, 2014).

<sup>260</sup>Serbia and Montenegro, Int’l Covenant on Econ. And Soc. and Cultural Rights, Rep. on its 34th and 35th Sess., Supp. No. 2 E/2006/22 (2005) 41 at. 288 and 315, 288 <http://www.refworld.org/pdfid/474d35ca2.pdf> (last visited Oct. 23, 2014).

<sup>261</sup>G.A. Res. A/64/432; <http://www.copac.coop/iyc/a-64-432-excerpt.pdf>. (last visited Oct. 23, 2014).

<sup>262</sup>Id. para. 8.

<sup>263</sup>U.N. G.A., 64th Sess. at 3A/C.3/64/L.6 <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/37/PDF/N0954737.pdf?OpenElement>, (last visited Oct. 23, 2014). *See also* 13 and 2, of Follow-up to the International Year of Older Persons: Second World Assembly on Ageing G.A. Res. 63/151, U.N. Doc. A/63/424 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/63/151&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/151&Lang=E). (last visited Oct. 23, 2014).

A notion closely related to the concept of ‘adequate standard of living’ is that of sustainable livelihood. Article 11 of the ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Similarly, it indicates that “states will take appropriate steps to ensure the realization of this right.”<sup>264</sup>

In the development context, the concept of sustainable livelihood focuses on “reducing poverty by empowering the poor to build on their opportunities.”<sup>265</sup> Among older persons, as highlighted by the Independent Expert on the Question of Human Rights and Extreme Poverty, the factors for poverty “include: lack of access to regular income, work, and health care, declining physical and mental capacities, and dependency within the household.”<sup>266</sup> These are the main tools required to maintain a sustainable livelihood, building on one’s own resources.

An important part of sustainable livelihoods is the right to own property. Every person has the right to own property, and “[n]o one shall be arbitrarily deprived of his property.”<sup>267</sup> Regarding the right of property, it has been underscored that “in many parts of the world, inheritance laws, both statutory and customary, deny women of all ages the right to own or inherit property when their husband dies. Family members sometimes force widows off their land or seize their property.”<sup>268</sup> Their ability to maintain a sustainable livelihood is severely restricted when their right to own property is not protected.

The scope of the right to a sustainable livelihood includes pensions and other related benefits, as well as access to services. In *Love, et al. v. Australia*, the HRC concluded that mandatory retirement in the interest of safety was based on reasonable and objective considerations, yet noted that age discrimination, while not enumerated, is a ground for violation of Article 26 of the ICCPR.<sup>269</sup> The CESCR expressed concern in 2001 about the widespread and unacceptable incidence of poverty in the Hong Kong Special Administrative Region, particularly the large

<sup>264</sup>Int’l Covenant on Econ., Soc. and Cultural Rights (ICESCR) *supra* note 288 at Article 11.

<sup>265</sup>Diana Carney, *Sustainable Livelihoods Approaches, Progress, and Possibilities for Change*, DEPARTMENT FOR INTERNATIONAL DEVELOPMENT [http://www.eldis.org/vfile/upload/1/document/0812/SLA\\_Progress.pdf](http://www.eldis.org/vfile/upload/1/document/0812/SLA_Progress.pdf) (last visited Oct. 23, 2014).

<sup>266</sup>Magdalena Sepúlveda, *Report of Independent Expert on Human Rights and Extreme Poverty, Rapporteur*, Para.15, (2010)(“To collect information to prepare this report the independent expert sent a questionnaire to Governments requesting information on their social pensions for older persons. The questionnaire addressed: (i) the legal and institutional framework; (ii) the schemes costs and coverage; (iii) implementation procedures; (iv) monitoring mechanisms and complaints procedures; and (v) studies and evaluations”).

<sup>267</sup>Universal Declaration of Human Rights, G.A. Res. 217 (111), A, UN. Doc A/Res/217(111) Article 17 (Dec. 10, 1948).

<sup>268</sup>HelpAge Position Paper (Convention) at 3.

<sup>269</sup>*Love v Australia*, Int’l Covenant on Civil and Political Rights, No. 983/2001, A/58/40 vol. II 286 at 2.1, 8.2, 8.3, and Individual Opinion of Mr. Prafullachandra Natwarlal Bhagwati, 302 (Mar. 25, 2003) <http://www1.umn.edu/humanrts/undocs/983-2001.html>.



number of older persons continuing to live in poverty without effective access to social services.<sup>270</sup> In the cases of United Kingdom of Great Britain and Northern Ireland, the CESCR reiterated “its concern about the persistence of considerable levels of poverty, especially in certain parts of the country”, and among certain sections of the population, including older persons.<sup>271</sup> Finally, in Korea, the CESCR expressed its concern about “the consequences of the widespread famine suffered by the country from the mid-1990s, and that certain groups,” including “older persons, have been more severely affected than others and have not received proper assistance in order to alleviate their plight.”<sup>272</sup>

In the UPR process, Monaco’s Working Group Report noted that older persons enjoy a long-standing policy of guaranteeing an income enabling them to live decently. Geriatric care arrangements were in place to allow older persons to remain living in their home as long as they wished, with the necessary financial assistance. When they had to leave their home, there were graduated establishments according to their needs. Notably, they could accede to all establishments, whatever their level of income.<sup>273</sup> In the Republic of Korea’s Working Group Report a reviewing state praised the government for its awareness of challenges, such as the increasing older population, though it did not offer solutions.<sup>274</sup>

## 2. *The Right to Food*

According to the General Comment No. 12 on the right to food, issued by the Committee of the ICESCR, “the human right to adequate food is of crucial importance for the enjoyment of all rights,” as “the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights,” such as the right to life.<sup>275</sup> The comment underlines that the right to adequate food “means physical and economic access at all

<sup>270</sup>China, 2001, Comm. On Econ. Soc. and Cultural Rights, Report on the 25th, 26th and 27th Sess. E/2002/22 E/C.12/2001/17 42 [http://www.bayefsky.com/general/e\\_2002\\_22\\_2002.php](http://www.bayefsky.com/general/e_2002_22_2002.php). (last visited Oct. 23, 2014).

<sup>271</sup>United Kingdom of Great Britain and Northern Ireland, ICESCR, E/2003/22 39 at 221 (2002) [http://www.unhchr.ch/tbs/doc.nsf/0/8c3da14278eb6162c1256d4f00561c38/\\$FILE/G0341455.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/8c3da14278eb6162c1256d4f00561c38/$FILE/G0341455.pdf). (last visited Oct. 23, 2014).

<sup>272</sup>Democratic People’s Republic of Korea, ICESCR, E/2004/22 (2003) 71 at 530.

<sup>273</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Monaco*, Part. 75, A/HRC/12/3, A/HRC/12/3, A/HRC/WG.6/5/L.2, (Jun. 4, 2009) available at: <http://www.refworld.org/docid/4a9cdb950.html>.

<sup>274</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Republic of Korea*, 14, A/HRC/8/40, A/HRC/8/40; A/HRC/WG.6/2/L.6 (May 29, 2008), available at: <http://www.refworld.org/docid/485b96303.html>.

<sup>275</sup>*General Comment 12 Right to Adequate Food*, U.N. Doc. E/C.12/1999/5 CESCR, 20<sup>th</sup> Sess. 4, (1999) available at <http://www1.umn.edu/humanrts/gencomm/escgencom12.htm>.

times to adequate food or means for its procurement.”<sup>276</sup> This is a right recognized by many states as a fundamental right.<sup>277</sup> A state’s economic vulnerability and widespread poverty affect vulnerable groups, including older persons,<sup>278</sup> who can be prone to food insecurity.<sup>279</sup>

The CESCR interprets the scope of the right to adequate food in General Comment No 12, stating that pursuant to Article 11 of the ICESCR, states recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,” which necessarily implies the right of everyone to be free from hunger.<sup>280</sup> The core aspects of the right to adequate food include “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”<sup>281</sup>

The right to food encompasses economic as well as physical access. The General Comment indicates that “socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programs.”<sup>282</sup> Likewise, it refers that “physical accessibility implies that adequate food must be accessible to everyone, in particular physically vulnerable individuals including elderly people.”<sup>283</sup> The General Comment also states that “any discrimination in access to food, as well as to means and entitlements for its procurement, including on the grounds of ... age... with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights, constitutes a violation of the Covenant.”<sup>284</sup> A violation of this right would occur if a state refused access to ade-

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<sup>276</sup>Id. at 14.

<sup>277</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Right to Food*, Jean Ziegler: addendum: mission to Bolivia, A/HRC/7/5/Add.2, (Jan. 30 2008) available at <http://www.refworld.org/docid/47c6c332.html>.

<sup>278</sup>UN Human Rights Council, *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights*, A/HRC/7/27, at no. 10. (Feb. 21 2008) available at <http://www.refworld.org/docid/47cfb4b22.html>.

<sup>279</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People’s Republic of Korea*, Vitit Muntarbhorn, no. 41 15, A/HRC/7/20, (Feb. 2008) available at <http://www.refworld.org/docid/47ce78b22.html>.

<sup>280</sup>General Comment 12 *supra* note 303 at para. 1.

<sup>281</sup>Id. at 8 (explaining in more detail the core aspects of the right to adequate food named in paragraphs 9–13).

<sup>282</sup>Id. at 13.

<sup>283</sup>Id.

<sup>284</sup>Id. at 18.

quate food on the grounds of age.<sup>285</sup> When it comes to food, states have a positive duty to protect persons in their jurisdiction from actions they undertake that may indirectly violate the right to an adequate standard of living. According to the Special Rapporteur on the right to food, privatization of state resources can lead to increased prices for the necessities of an adequate standard of living, which disproportionately affect poor and older persons.<sup>286</sup>

The CESCR has explained that this also encompasses protection of productive lands as well as a functioning distribution of the market systems that move foodstuffs.<sup>287</sup>

Economic accessibility refers to maintaining costs at a level that is attainable and does not infringe on the exercise of other basic rights.<sup>288</sup> Physical accessibility refers to the ability of those who are physically impaired or disabled, which includes many older persons, to have access to food. States should guarantee that, during times of economic and national emergencies, older persons are given special protection<sup>289</sup> and priority if possible.<sup>290</sup> For example in natural disasters, priority access to humanitarian aid goods and services should be afforded to older persons.<sup>291</sup> The obligation to guarantee the right to food also requires states to legislate and provide judicial review to protect and enforce the enjoyment of the right to food.<sup>292</sup> States must also refrain from using access to food as a political weapon.<sup>293</sup>

States should reduce environmental pollution that affects food production and should provide older persons with adequate access to potable water to reduce the

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<sup>285</sup>Id. (stating that any discrimination in access to food on the grounds of age would result in a violation of the Covenant).

<sup>286</sup>*Report of the Special Rapporteur on the Right to Food, Communications to and from Governments: A/HRC/4/30/Add.1*, no. 38. (May 18 2007), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/126/30/PDF/G0712630.pdf?OpenElement>.

<sup>287</sup>Id. at 12 (stating that “availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand”).

<sup>288</sup>General Comment 12 *supra* note 303 13.

<sup>289</sup>Id. at 28. (stating that even where a state faces “severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals”).

<sup>290</sup>Id. 38 (stating that “priority in food aid should be given to the most vulnerable populations”).

<sup>291</sup>*Annual Report of the Representative of the Secretary-General on Human Rights of Internally Displaced Persons: A/HRC/4/38/Add.1*, at B.1.3. (Jan 23, 2006) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/105/12/PDF/G0710512.pdf?OpenElement>.

<sup>292</sup>General Comment 12 *supra* note 303 at 32 (stating that “any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies” and that such victims are entitled to “adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition”).

<sup>293</sup>Id. at 37 (stating that “food should never be used as an instrument of political and economic pressure”).

spread of disease.<sup>294</sup> Furthermore, they should provide older persons with access to up-to-date information and education regarding food and nutrition.<sup>295</sup> Additionally, states should refrain from inhibiting persons' access to adequate food,<sup>296</sup> and should guarantee that third parties do not inhibit individuals' right to food. This requires states to formulate national food programs that are culturally appropriate.<sup>297</sup>

The 2005 Report on the World Social Situation expressed the concern about added dimensions to the patterns of inequality characterizing food crises. Food may not be divided equitably among household members, with women, children, and older persons receiving proportionately less than adult men.<sup>298</sup> The topic was also addressed by the Report of the Secretary General on the follow-up to the Second World Assembly on Ageing, noting that the Food and Agriculture Organization mainstreamed its work on rural aging by focusing on enhancing income opportunities for rural older persons in agriculture. This included providing older rural residents with the agro-technical and business management skills they need and preparing agricultural extension services to address extension and training needs of older farmers.<sup>299</sup>

According to the Report of the United Nations High Commissioner for Human Rights from April, 2012, "many older persons are capable of maintaining food security for themselves and those in their care through production or procurement of food by their own means." However, older persons may be more likely of losing access to resources, like "the situation of older widows, who in some cases may not control access to agricultural land." Furthermore, the report indicates that "older persons may require support for procuring, accessing and preparing food adequate for their nutrition."<sup>300</sup> Overall, the Report appears to suggest that states have a key obligation under international human rights law of providing special support to older persons to allow them to exercise their right to seek food security.

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<sup>294</sup>Eide, at 91–92 (stating that disease and malnutrition can be avoided by removing the dangers and risks associated with environmental pollution).

<sup>295</sup>Id. (stating that all segments of society should have access to education and information about essential needs and associations with nutrition and health care).

<sup>296</sup>General Comment 12 *supra* note 303 15 (noting that states have an obligation to protect vulnerable individuals by taking measures to "ensure that enterprises or individuals do not deprive [them] of their access to adequate food").

<sup>297</sup>Id. at 39 (stating that "products included in international food trade or aid programs must be culturally acceptable to the recipient population").

<sup>298</sup>Press Release, General Assembly, Equality Should be at the Forefront of Socio-economic Policymaking, Third Committee Told at Beginning of Debate on Social Issues, A/60/117 210, <http://www.un.org/press/en/2005/gashc3814.doc.htm> (last visited Oct. 23, 2014).

<sup>299</sup>U.N. G.A., 60th Sess. 34, available at <http://www.un.org/ga/60/third/docslist.htm>. (last visited Oct. 23, 2014).

<sup>300</sup>*Report of the United Nations High Commissioner for Human Rights*, U.N. Econ. And Soc. Council, 41, 42, (Apr. 20, 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

### 3. *The Right to Education and Culture*

The right to education is essential to ensure the fulfillment of the civil, political, economic, social and cultural rights.<sup>301</sup> This right clearly articulates the notions of indivisibility and interdependence of all human rights.<sup>302</sup> Older persons generally experience severe limitations in the enjoyment of the right to education, including access to literacy training as well as other holistic educational activities (cultural, spiritual, recreational, etc.),<sup>303</sup> due to, among others, the social preconception that education is to be delivered to younger generations. The right of everyone to education is stipulated in Article 26 of UDHR, which states “that technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.” Further, Article 26 elaborates upon the scope of the right stating that “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”

The right to education includes a variety of dimensions, such as access to educational institutions, freedom to seek education and deliver education, academic freedom (which is closely related to freedom of expression and thought) and non-discrimination in any of the mentioned dimensions.<sup>304</sup> Article 13 of the ICESCR states that “higher education shall be made equally accessible to all, including that fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.” The CESCR has acknowledged that this provision “is the most wide-ranging and comprehensive article on the right to education in international human rights law.”<sup>305</sup> According to the CESCR, this right, in all its forms and levels, should be available, accessible, acceptable, and adaptable.<sup>306</sup>

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<sup>301</sup>Manfred Nowak, *The Right to Education, in Economic, Social and Cultural Rights: A Textbook* 189 (Asbjorn Eide et al. eds., 1995) (explaining that people cannot exercise various civil, political, economic, social, and cultural rights without attaining a minimum level of education, such as literacy).

<sup>302</sup>*Plans of Action for Primary Education* (Art. 14); General Comment 11, U.N. Econ., Soc., & Cultural Rights. Comm., 20th Sess., 2, UN Doc. E/C.12/1999/4 (1999).

<sup>303</sup>CRC, Article 28; CRPD, Article 24; ICESCR, Article 13.

<sup>304</sup>See generally Nowak, *supra* note 222, at 198–211 (listing and discussing his delineation of secondary rights stemming from the core right to education).

<sup>305</sup>*Right to Education* (Art. 13); General Comment 13, U.N. Econ., Soc., & Cultural Rights. Comm., 21st Sess., 2, U.N. Doc. E/C.12/1999/10 (1999) available at <http://www.unhcr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>. (last visited Oct. 23, 2014).

<sup>306</sup>General Comment 13, 6(a)-(d) (explaining that although each state party contends with differing conditions in providing education to its people, the right to education depends on these “interrelated and essential features”).

Furthermore, the CESCR stated in its General Comment 13 that the right to fundamental education is not limited by age and should be extended to older persons.<sup>307</sup> It considered fundamental education an important aspect of adult education and required states to provide all aspects of the right to education in a suitable manner for all different age groups.<sup>308</sup> It also indicated that states should establish educational institutions that specialize in gerontology, geriatrics, and geriatric psychology, in order to ensure that the education system is supporting the needs of the whole population.<sup>309</sup> The CESCR has also established fellowship systems that enhance educational access for disadvantaged groups, which could include older persons.<sup>310</sup> Additionally, in General Comment 6 the CESCR stressed the need to interpret these rights from two different perspectives, including the right of older persons to benefit from educational programs, and the right to have the knowledge and experience of older persons passed on to persons of younger generations.<sup>311</sup>

Education permeates every social group in society. Its implementation must always take into account the diverse audience it addresses, based on age, among many other factors.<sup>312</sup> To ensure these rights, the CESCR has also requested that states provide community centers, both educational and recreational, to assist the development of life-long education for older persons.<sup>313</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) further recommends “informal, community-based and recreation-oriented programs for older persons to help to develop their sense of self-reliance.”<sup>314</sup>

One example of a culture-preserving program is an intergenerational center, which may have both educational and inter-personal benefits. Furthermore, such

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<sup>307</sup>Id. 24.

<sup>308</sup>Id. (clarifying that states must develop educational “curricula and delivery systems” that are suitable for students of any age).

<sup>309</sup>Id. 42 (providing various recommendations to States that ensure that older persons benefit from scientific progress).

<sup>310</sup>Id. 26 (incorporating the non-discrimination and equality clauses of the Covenant into the requirement of establishing a fellowship system).

<sup>311</sup>See, e.g., General Comment 6, 36. (outlining two views on how states should approach the education rights of older persons).

<sup>312</sup>See id. 37 (asserting that access to these educational programs fulfills the recommendations provided in Principle 16 of the United Nations Principles for Older Persons); See e.g., *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Germany*, U.N. Econ., Soc., & Cultural Rights. Comm., 9th Sess., 46th mtg., 11, U.N. Doc. E/C.12/1993/17 (1994) (recommending that Germany provide information “to facilitate the access and the participation of older persons in educational programs”)(this recommendation stems from the Committee’s review of Germany’s second periodic report regarding the status of rights protected by Articles 13 to 15 of the ICESCR. Id. para 1).

<sup>313</sup>General Comment 6, 37 (drawing from the Vienna International Plan of Action and its recommendations in developing a sense of independence for older persons and the community’s responsibility for ensuring the rights of older persons to education).

<sup>314</sup>Report of the Expert Group Meeting “Rights of Older Persons,” 29 (2009), available at <http://www.un.org/esa/socdev/ageing/documents/egm/bonn09/report.pdf>. (last visited Oct. 23, 2014) (hereinafter “U.N. SG Report on Aging”).

centers would provide older persons with a forum in which to teach others about their experiences and insights. To respect the right to culture, the CESCR has urged states to refrain from segregating older persons in society. States should actively integrate older persons into society acknowledging their right to education as well as the education they provide with a wealth of information and skills.<sup>315</sup>

Literacy is an important outcome of education. The 2009 report of the expert group meeting on the rights of older persons showed that “older persons, especially older women and those residing in rural areas of developing countries, are more likely to be illiterate than the other parts of the population.”<sup>316</sup> In Western Asia, for example, illiteracy among older women is high because many were denied access to educational opportunities throughout their lives.<sup>317</sup> Such isolation has long-lasting effects on social integration, access to information, and even access to the law. A knowledge-based and service-based society, as many developed countries have become and many developing countries aspire to become, requires policies that ensure lifelong access to education and training.<sup>318</sup>

According to the second review and appraisal of the Madrid International Plan of Action on Ageing in 2002, “lifelong education and training are critical for the participation of older persons in the labor force. Yet the (current) level of education among persons aged 60 years and above remains much lower than among (current) younger generations. As a result, older persons face challenges in adjusting to economic and technological changes.”<sup>319</sup> Likewise, it was mentioned that the “lifelong education for older persons has typically taken the form of “third age” universities, in countries such as Argentina, Canada, China, Indonesia, Hungary, the Russian Federation and Serbia. For instance, in Argentina there is a specific program, the University Extension for Older Persons (*Extensión Universitaria para Adultos Mayores*), which provides courses for older persons at national universities.”<sup>320</sup>

Furthermore, the second review indicated that “while there have been reports of small-scale, local-level initiatives that offer older persons training in information and communications technology, there are no such national programmes on record.”<sup>321</sup> It further stated that it is “worth noting ... the case of Hungary, where

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<sup>315</sup>See id. 38 (acknowledging the significance of preserving the role of older persons as sources of “information, knowledge, traditions and spiritual values”).

<sup>316</sup>See, e.g., UNDESA, World Report on Ageing 2009.

<sup>317</sup>Bonn Meeting 2009, p. 5.

<sup>318</sup>Lindsay Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* 16 (Int’l Symp. on the Rts. of Older People, Background Briefing Paper, Jan. 2009), at 4–5.

<sup>319</sup>*Second Review and Appraisal of the Madrid International Plan of Action on Ageing*, 47, (2002) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/579/60/PDF/N1157960.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>320</sup>Id. at para. 48.

<sup>321</sup>Id. at para. 49.



recently implemented programmes aimed at improving ICT skills among the general population, such as the net ready programme launched in 2007 and the e-Hungary programme in 2004,”<sup>322</sup> which are good examples of programs targeting older persons.

#### 4. *The Right to Work*

States should protect older workers’ right to work in just and favorable work conditions through regulation of employment conditions. Access to education throughout the life course is necessary to ensure this right. Adequate work and employment are important components of the right to access to an adequate income. The right to work encompasses the right to earn a livelihood in decent work conditions and the right to individual and personal freedom and dignity.<sup>323</sup> Older persons have the right to be free from discrimination in hiring, promotion, wages, and discharge, and they have equal rights to form and to join trade unions.<sup>324</sup> For most of the world’s older people, retirement is not an option. Those who are poor have no choice but to work, and policy makers often ignore the needs and contributions of older workers.<sup>325</sup>

The scope of the right to work for everyone according to Article 23 of UDHR includes a “free choice of employment, just and favorable conditions of work and to protection against unemployment”, as well as “the right to equal pay for equal work.” The provision also includes “the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Older persons’ access to these rights has not been universally defended in national laws and regulations.

Article 6 of the ICESCR is a landmark provision establishing the scope of the right to work. This provision recognizes the right to work as the right of everyone to have the opportunity to gain his or her living by work that he or she freely chooses or accepts. Further, under that provision, states agree “to achieve the full realization of this right”, including “technical and vocational guidance and

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<sup>322</sup>Id.

<sup>323</sup>See Krzysztof Drzewicki, *The Right to Work and Rights in Work, in Economic, Social and Cultural Rights: A Textbook* 169 (Asbjorn Eide et al., eds., 1995) (stating that “the right to work and rights in work constitute a core of not only socio-economic rights, but also fundamental human rights”).

<sup>324</sup>As stated in many human rights declarations including the UDHR, Article 23; CRPD, Article 27.

See also, Kelly Report, *supra* note 30, at 12. Committee on Economic, Social and Cultural Rights General Comment 20, 29, 25, UN SG Report on Aging, *supra* note 342.

<sup>325</sup>*Working for Life: Making Decent Work and Pensions a Reality for Older People*, Aging and Development, HelpAge International, p. 2.

training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”<sup>326</sup>

Also, CESCR General Comment No. 6 specifically recognizes the difficulty older persons face in finding and sustaining jobs, and advocates measures that will prevent age discrimination. In developed states, mandatory retirement at a certain age is a contentious issue. In certain circumstances it can be discriminatory, although it is often embraced by persons who would rather receive retirement benefits than continue working. In developing countries, where no such retirement benefits are generally available, conditions of work and fair income, lack of access to credit, and training are particularly salient to older workers.<sup>327</sup> Aware of the problems that older persons may encounter to find and keep a job, the General Comment “stresses the need for measures to prevent discrimination on grounds of age in employment and occupation.”<sup>328</sup>

According to the Department of Economic and Social Affairs of the United Nations (DESA), “some form of legislation against age discrimination in employment exists in approximately 50 countries around the world”, but “it is difficult to assess the effectiveness of such legislation in combating age discrimination.”<sup>329</sup> Furthermore, DESA underscored that “effective means of publicizing relevant legal provisions and of monitoring and enforcing compliance are needed if laws are to have an impact” and it indicated that “efforts to combat negative stereotypes held by employers may also have an effect; in some countries informational campaigns have been launched to address this issue.”<sup>330</sup> Age discrimination in employment affects many other rights, and should be a priority for any country seeking to ensure the rights of older persons are protected.

Working older persons face age and gender discrimination. A report of HelpAge indicated that older men and women are often denied “access to social protection, income security, legal protection for their rights as workers, or formal support networks.”<sup>331</sup> States should look to empower older persons to participate actively in their societies, including opportunities for older persons to work as long as they wish, in productive and satisfying jobs, without being forced into retirement. The CESCR recommends strengthened unemployment programs for groups with high rates of long-term unemployment, particularly persons over 40.<sup>332</sup> The follow-up to the International Year of Older Persons: Second World

<sup>326</sup>Article 6 thorough 8, ICESCR.

<sup>327</sup>Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* pg. 4 (Jan. 2009).

<sup>328</sup>*Id.*

<sup>329</sup>*Current Status of the Social Situation, Wellbeing, Participation in Development and Rights of Older Persons Worldwide*, UNITED NATIONS, 43 (2011) available at <http://www.un.org/esa/socdev/ageing/documents/publications/current-status-older-persons.pdf>. (last visited Oct. 23, 2014).

<sup>330</sup>*Id.*

<sup>331</sup>Chung Working Paper at para. 16, 2010.

<sup>332</sup>Spain, ICESCR, E/2005/22 (2004) 34 at 235 and 252.

Assembly on Ageing also recognized “that specific programmes should be developed aimed at overcoming discrimination in employment and at integrating into the labour market women... and older persons.”<sup>333</sup> The goal of promoting full employment as outlined in Commitment 3 of the Copenhagen Declaration includes older persons as long as they are able and willing to work.<sup>334</sup>

Older workers make up an increasing proportion of the labor force, though often in informal labor rather than formal labor. Formal labor force participation after age 65 has changed little in the last thirty years, remaining constant at 10 percent in developed countries, and 27 percent in developing countries.<sup>335</sup> It is projected to remain unchanged despite the drastic increase in numbers of older persons,<sup>336</sup> signaling a great increase in the numbers of older persons in the workforce.

The report on the follow-up to the Second World Assembly on Ageing expressed that “the differences in levels of labour force participation between developed and developing regions reflect the typical inverse relationship between labour force participation at older ages and the proportion of the older population receiving a pension.”<sup>337</sup> Furthermore, the report indicated that ‘in developing countries, employment opportunities for older persons often are only available in the informal sector, where jobs typically offer relatively low pay, insecure tenure and limited opportunities for advancement, and lack retirement benefits.’<sup>338</sup>

The right to work is one of the most clearly connected to economic, social, and cultural rights<sup>339</sup> because these rights relate to not only protection from labor-related violations such as slavery, forced and compulsory labor, and discrimination, but also incorporate such positive aspects as the freedom to work, the choice of occupation, and the choice of place of work.<sup>340</sup> These rights also encompass the right to free employment services and guidance and assistance for job seekers and access to information.<sup>341</sup>

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<sup>333</sup>G.A. Res 63/51 23, U.N. Doc. A/63/424 (Feb. 11, 2009) available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/63/151&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/151&Lang=E).

<sup>334</sup>Robert Venne Position Paper at 8.

<sup>335</sup>*World Population Ageing*, United Nations Dept. of Economic and Social Affairs, Population Division, 41. (2009) available at [http://www.un.org/esa/population/publications/WPA2009/WPA2009\\_WorkingPaper.pdf](http://www.un.org/esa/population/publications/WPA2009/WPA2009_WorkingPaper.pdf). (last visited Oct. 23, 2014).

<sup>336</sup>*Id.*

<sup>337</sup>U.N. Secretary-General, *Follow-up to the Second World Assembly on Aging*, U.N. Doc. A/67/188 6 (Jul. 26, 2012), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/442/82/PDF/N1244282.pdf?OpenElement>.

<sup>338</sup>*Id.* at 11.

<sup>339</sup>*Id.* at 171 (explaining that the “relatively developed stage of juridization of labour rights has, to a larger extent, been a contribution of the objective law (international labor legislation) than of the subjective law (international law of human rights)”).

<sup>340</sup>*Id.* at 178 (mentioning that human rights and labor law include freedoms such as the choice of occupation and freedom of choice for a place of their performance).

<sup>341</sup>*Id.* at 180 (stating that before this right emerged in the international human rights field, the International Labour Organization Conventions primarily regulated the issue).

Regarding the challenges faced by the older workers, the DESA has indicated that there is “discrimination in hiring, promotion and access to job-related training” and that when older persons lose their jobs they “tend to remain unemployed for longer periods than their younger counterparts.”<sup>342</sup> The CESCR expressed a concern about older persons under the retirement age who had trouble finding or keeping a job; the working conditions of older persons and the lack of preparation they receive prior to actually retiring.<sup>343</sup> To respect these rights, the CESCR again maintained that states refrain from discriminating against elderly persons based on their age, both during the hiring process, and during the evaluation process. The CESCR suggested that there should not be age requirements for all jobs, nor mandatory retirement provisions. In addition, to respect these rights, the CESCR stated that rights categorized in Article 8, namely trade union rights, should apply to elderly workers.<sup>344</sup>

In the UPR process, Switzerland emphasized older persons’ greater difficulty than the population on average in entering or returning to the labor market. Similarly, reentry into the labor market for workers over age 50 is much more difficult than workers under 50 years of age.<sup>345</sup> Of course, while older persons may be those carrying this burden of discrimination, the problem points to discrimination in hiring practices. This is a little-addressed issue in the international human rights framework. CESCR expressed deep concern about discrimination in employment on the basis of age in Croatia in 2001.<sup>346</sup> Some states have instituted special measures to identify and protect older workers. Canada’s UPR Working Group Report listed single adults as especially vulnerable, and therefore entitled to special changes in the federal budget regarding the older workers.<sup>347</sup> Ecuador highlighted its employment policies covering various groups, including older

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<sup>342</sup>*Current Status of the Social Situation, Well-Being, Participation in Development and Rights of Older Persons Worldwide* U.N. Dep’t Econ. Soc. Affairs available at <http://www.un.org/esa/socdev/ageing/documents/publications/current-status-older-persons.pdf>. (last visited Oct. 23, 2014).

<sup>343</sup>See General Comment 6, 22–24 (stating that older people often have difficulties finding and keeping jobs after they reach a retirement age).

<sup>344</sup>See *Id.* at 25 (implying that this appears to be a duty that states should undertake immediately).

<sup>345</sup>*Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1- Switzerland* 66, A/HRC/WG.6/2/CHE/1 (2008) UN Human Rights Council, (Apr. 7, 2008) available at <http://www.refworld.org/docid/4858ef1b2.html>.

<sup>346</sup>Croatia, ICESCR, E/2002/22 125 at 895. (2001) [http://tbinternet.ohchr.org/\\_layouts/j63treatybodyexternal/Download.aspx?symbolno=E%2f2002%2f22%28SUPP%29&Lang=en](http://tbinternet.ohchr.org/_layouts/j63treatybodyexternal/Download.aspx?symbolno=E%2f2002%2f22%28SUPP%29&Lang=en). (last visited Oct. 23, 2014).

<sup>347</sup>Art 39, A/HRC/11/17 <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CCASession4.aspx>; *Report of the Working Group on the Universal Periodic Review - Canada*, UN Human Rights Council, A/HRC/WG.6/4/L.3; A/HRC/11/17, (Mar. 3 2009) available at <http://www.refworld.org/docid/49f964ec2.html>.

persons.<sup>348</sup> Japan's Working Group Report requested additional information on measures to ensure the rights of elderly workers.<sup>349</sup> Motivated by the need for equal access and training, Poland's Working Group Report asked the responding government to educate older workers.<sup>350</sup>

## 5. The Right to Adequate Housing

The right to housing is delineated in Article 11.1 of the ICESCR, as a part of an adequate standard of living.<sup>351</sup> Applying the norm requires states to respect, ensure, and fulfill this right in a manner that creates a living environment suited to the culture, skills, needs, and wishes of the people.<sup>352</sup> This right is complemented by the right to be protected against "arbitrary or unlawful interference" within one's home.<sup>353</sup>

According to CESCR General Comment No. 4, everyone is entitled to adequate housing, and individuals as well as families are entitled to this right "regardless of age, economic status, group or other affiliation or status and other such factors."<sup>354</sup>

CESCR General Comment No. 6 affords protection to older persons with respect to housing, expanding on the need for family support; housing "must be viewed as more than mere shelter as it clearly contains a psychological and social

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<sup>348</sup>Id. at 48.

<sup>349</sup>*Report of the Working Group on the Universal Periodic Review - Japan*, UN Human Rights Council, A/HRC/8/44; A/HRC/WG.6/2/L.10, (May 30 2008) available at <http://www.refworld.org/docid/485b962fd.html>.

<sup>350</sup>*Report of the Working Group on the Universal Periodic Review - Poland*, UN Human Rights Council, 24 A/HRC/8/30; A/HRC/WG.6/1/POL/4, (May 23, 2008) available at <http://www.refworld.org/docid/4857aa220.html>.

<sup>351</sup>Eide, *supra* note 312, at 89–105 (discussing the right to housing as one of many factors associated with adequate living standards: UDHR and ICESCR both espouse the view that shelter is part of the right to an adequate standard of living). Cf. Revised European Social Charter, *supra* note 10, art. 23 (addressing housing within the context of the rights of older persons).

<sup>352</sup>Scott Leckie, *The Right to Housing, in Economic, Social and Cultural Rights: A Textbook* 113–14 (Asbjorn Eide et al., eds., 1995) (States are required to: "place sufficient legal and policy emphasis on the full realization of housing rights, through a series of active measure including national and/or local legislative recognition of the right, the incorporation of housing rights imperatives into housing and related policies, and the identification of discernable "bench marks" towards the full enjoyment of housing rights by all sectors of society").

<sup>353</sup>ICCPR article 17.1.

<sup>354</sup>*General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, CESCR, E/1992/23 6th Sess., at 53, (Dec. 13, 1991) available at <http://www.refworld.org/docid/47a7079a1.html>; *Compilation of General Comments and General Recommendations Adopted by Human Rights Treat Bodies*, U.N. Doc. HRI/Gen/1/Rev.1 (1994), <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm>. (last visited Oct. 23, 2014).

dimension.”<sup>355</sup> Likewise, a report of the Secretary General of the UN pointed out that “to the extent possible, older persons should be enabled to continue to live in their homes for as long as possible, to avoid both the physical and psychological disruptions involved in moving to an unfamiliar location,” and stated that “appropriate and adequate means of transportation are also needed so that older persons can remain mobile and remain integrated into the larger community.”<sup>356</sup> Approximately 14 per cent of the world’s elderly live alone, a situation that can lead to greater vulnerability. Older persons who live alone are more likely to need assistance in the case of illness or disability and are at greater risk of social isolation and poverty.<sup>357</sup>

Furthermore, according to CESCR’s General Comment No. 4, everyone is entitled to adequate housing, and individuals as well as families are entitled to this right regardless of age.<sup>358</sup> The CESCR has further indicated that an initial step toward the realization of those rights is to identify the sectors of the population that should be the focus of positive state action.

Throughout General Comment No. 4, the CESCR reiterated that the right to housing is an immediate right. “In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”<sup>359</sup> The definition of available resources in relation to this right might include international assistance; such as the importance of the right to housing. Rights enforcement is a key to the immediacy of the right. According to the CESCR, “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>360</sup>

The right to housing includes the right to be free from arbitrary or forced evictions.<sup>361</sup> Demolitions of homes can have disproportionate effects on older persons.<sup>362</sup> The CESCR notes that efficient legal appeals to prevent evictions and

<sup>355</sup>*The Economic, Social, and Cultural Rights of Older Persons General Comment 6*, CESCR E/1996/22 Article 11, 33 (1996). <http://www.unhcr.ch/tbs/doc.nsf/0/482a0aced8049067c12563ed005acf9e?Opendocument>. (last visited Oct. 23, 2014).

<sup>356</sup>U.N. SG Report on Aging, *supra* note 342, para. 27.

<sup>357</sup>Chung Working Paper, 2010 at para. 12.

<sup>358</sup>*General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, CESCR, E/1992/23, (Dec. 13, 1991) available at <http://www.refworld.org/docid/47a7079a1.html>.

<sup>359</sup>*Id.* at para. 14.

<sup>360</sup>General Comment 4, *supra* note 243, para. 8(a).

<sup>361</sup>*Id.* para. 18 (quoting the Committee’s statement that “instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”); *See also* General Comment 7, (noting that older persons “suffer disproportionately from the practice of forced evictions”).

<sup>362</sup>*Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, Richard Falk, A/HRC/10/20 at no. 78. UN Human Rights Council, (Feb. 11 2009) available at <http://www.refworld.org/docid/49d33a8a2.html>.

demolitions, legal procedures for compensation, complaints against landlords for inadequate housing conditions, and class action suits addressing discrimination claims are appropriate remedial measures.<sup>363</sup> States should monitor the housing market for discriminatory practices, excessive rent, inflated housing costs and taxes, availability of adequate public housing, and access to basic services such as heating.<sup>364</sup> Discriminatory practices in housing should be addressed by ensuring that victims have access to legal representation and, where a quick settlement is not reached, prompt access to hearings and remedies.<sup>365</sup>

The CESCR stated that “disadvantaged groups must be accorded full and sustainable access to adequate housing resources.”<sup>366</sup> Sustainable access for older persons is unlikely to be achieved through voucher programs alone.<sup>367</sup> The CESCR listed older persons as a disadvantaged group, and stated that disadvantaged persons are entitled to priority consideration in national housing schemes.<sup>368</sup> Homes should be located near employment options, schools, and other social facilities, but should not be located near polluted areas that threaten the right to health.<sup>369</sup> Finally, the CESCR recognized the need for cultural adequacy.<sup>370</sup> Building materials and policies, as examples, should enable cultural expression and allow for technological advances.

The United Nations High Commissioner for Human Rights published a report in April 2012 in which it referred to some forms of contemporary practices that severely impair the full enjoyment of the right to housing. These practices appear to exist both in developing countries and developed countries. The High Commissioner stated in this regard that “older women face obstacles to inheriting housing, land and property. In other regions, long-term older residents may be harassed by landowners or real estate agents to force them to evacuate their housing so that it can be redeveloped or sold at a higher price.”<sup>371</sup>

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<sup>363</sup>Id. at para. 17 (listing potential domestic legal remedies for violations of the right to adequate housing).

<sup>364</sup>Leckie at 115 (explaining that in order to fulfill the right to adequate housing, governments must guarantee persons access to those housing rights otherwise unattainable by their own efforts).

<sup>365</sup>UN Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Miloon Kothari: addendum: mission to Canada* A/HRC/10/7/Add.3, (9 to 22 Oct. 2007), (Feb. 17 2009) available at <http://www.refworld.org/docid/49b7af2c2.html>.

<sup>366</sup>Id. at para. 8(e).

<sup>367</sup>UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin: addendum: mission to Georgia*, A/HRC/10/13/Add.2, (Feb. 13 2009) available at <http://www.refworld.org/docid/49b7c0172.html>.

<sup>368</sup>Id. (stating that “such disadvantaged groups as older persons ... should be ensured some degree of priority consideration in the housing sphere”).

<sup>369</sup>Id. at para. 8(f).

<sup>370</sup>Id. at para. 8(g).

<sup>371</sup>*Report of the United Nations High Commissioner for Human Rights*, U.N. Econ. and Soc. Council, E/2012/51, para. 45 (Apr. 20, 2012), [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).



Likewise, the High Commissioner emphasized that

architectural barriers can greatly affect older persons. For instance, older persons may be unable to leave their apartments for long periods in buildings lacking functioning elevators. This phenomenon, described as “prison flats”, may isolate older persons, and may also pose important obstacles to basic activities of daily life, like buying food or attending medical treatment. The systematic inclusion of specific accessibility criteria and the universal design in housing and building codes, and city planning, would serve various parts of the population, including older persons, to enjoy adequate housing.<sup>372</sup>

States should not evict an older person where the action would expose older persons to other human rights violations; homelessness and exposure to the elements are particularly dangerous for this population.<sup>373</sup> Older persons who are evicted from their homes and lacking family support should be provided with humanitarian assistance.<sup>374</sup> States should provide suitable facilities for elderly persons who cannot afford them.<sup>375</sup> Additionally, states should protect older persons from third party abuse, such as arbitrary evictions, discrimination, and harassment,<sup>376</sup> and heavily penalize “mobbing.”<sup>377</sup> There is a critical lack of housing in some

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<sup>372</sup>Id. at para. 47.

<sup>373</sup>*Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Government Communications, Bangladesh: A/HRC/7/16/Add.1, (Mar. 4 2008) available at [http://www.internal-displacement.org/8025708F004CE90B/%28httpDocuments%29/63F06A78949814D6C125770A0048CA1E/\\$file/G0811338+4+March+2008.pdf](http://www.internal-displacement.org/8025708F004CE90B/%28httpDocuments%29/63F06A78949814D6C125770A0048CA1E/$file/G0811338+4+March+2008.pdf).*

<sup>374</sup>*Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin: addendum: mission to Georgia, A/HRC/10/13/Add.2, (Feb. 13 2009) available at <http://www.refworld.org/docid/49b7c0172.html>.*

<sup>375</sup>Protocol of San Salvador, *supra* note 9, art. 17 (declaring that everyone has a “right to special protection in old age” and therefore requiring States Parties to provide food and specialized medical care for elderly individuals); *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (“Protocol of San Salvador”), Organization of American States (OAS), A-52, (Nov. 16 1999) available at <http://www.refworld.org/docid/3ae6b3b90.html>.

<sup>376</sup>Leckie, *supra* note 241, at 114–15 (specifying that where third parties such as landlords, property developers, and land owners infringe on the rights of housing rights beneficiaries, public authorities should act to prevent future deprivations).

<sup>377</sup>UN Human Rights Council: *Addendum to the Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Australia* (31 July to 15 August 2006), A/HRC/4/18/Add.2, (May 11 2007), available at <http://www.refworld.org/docid/46652ba52.html>.; *Preliminary note on the mission to Spain* A/HRC/4/18/Add.3, no. 11 (June 5 2007) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/128/14/PDF/G0712814.pdf?OpenElement>; *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Spain: A/HRC/7/16/Add.2* at 52. (Feb. 7 2008) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/105/31/PDF/G0810531.pdf?OpenElement> (“Mobbing” is illegal eviction for speculative purposes).

states.<sup>378</sup> The CESCR, for example, has urged Italy “to take effective measures to ensure that forced evictions of Roma and tenants who cannot pay their rents comply with the guidelines established by the Committee in its General Comment No. 7 on the right to adequate housing” and the prohibition of “forced evictions, and to provide more housing units to cater for the needs of older persons.”<sup>379</sup> Going a step further, the 2009 Final Report of the Third Committee encouraged states to “promote the concerns of older persons and persons with disabilities in the planning, implementing and evaluating of all development programmes and policies.”<sup>380</sup>

The rights of older persons should be integrated into all national housing sector policies.<sup>381</sup> Specific funding should be directed to older persons due to increased housing discrimination, and plans to make available various forms of housing should be nationally adopted.<sup>382</sup> To guarantee these rights, states should acknowledge the particular circumstances of older persons when establishing urban development plans and should include community centers and other facilities that account for the needs of all. This would include providing transportation to older residents.<sup>383</sup> Other considerations, such as the fact that older persons are disproportionately affected by electricity outages when dependent on lifts in multi-story buildings, should also be considered.<sup>384</sup> Local authorities are obligated to take into

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<sup>378</sup>*Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Miloon Kothari: Addendum: Mission to South Africa*, UN Human Rights Council, A/HRC/7/16/Add.3, (Feb. 29 2008) available at <http://www.refworld.org/docid/47d55d3f2.html>.

<sup>379</sup>U.N. Report on the 32nd and 33rd Sess. Sup. No. 2, ICESCR, E/2005/22 (2004) 54 at 458. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/409/40/PDF/G0540940.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>380</sup>U.N. Res A/64/432 28 <http://www.copac.coop/iyca-64-432-excerpt.pdf>. (last visited Oct. 23, 2014).

<sup>381</sup>*Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rolnik: addendum: follow-up to country recommendations: Afghanistan, Mexico, Peru and Romania*, A/HRC/10/7/Add.2, UN Human Rights Council, (Feb. 24 2009), available at <http://www.refworld.org/docid/49c78d342.html>.

<sup>382</sup>*Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, Miloon Kothari: addendum: Preliminary note on the Mission to Canada (9 to 22 October 2007)*, A/HRC/7/16/Add.4, UN Human Rights Council, (Feb. 28, 2008) available at <http://www.refworld.org/docid/47d549a62.html>.

<sup>383</sup>General Comment 6, art. 11, 33 (emphasizing the need to facilitate the “mobility and communication” of elderly people through national policies).

<sup>384</sup>*Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Government Communications, Tajikistan*: A/HRC/7/16/Add.1, (March 4 2008) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/113/38/PDF/G0811338.pdf?OpenElement>.

account needs of older persons in housing schemes.<sup>385</sup> States should encourage older persons to participate in the development of legislation and policies committed to achieving the full implementation of housing rights.<sup>386</sup>

## 6. *The Right to Social Protection*

Article 22 of the UDHR states that everyone “has the right to social security and is entitled to its realization, through national effort and international co-operation in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity.”<sup>387</sup> One of the most substantial contributions to the understanding of the human rights dimension of social protection for older persons was made by the UN independent expert on the question of human rights and extreme poverty. In 2008, the independent expert indicated that “extreme poverty and social exclusion constitute a violation of human dignity”, and can be prevented it by adopting social security measures.<sup>388</sup> In 2010, the report of the independent expert stated that “establishing or extending social security systems is more than a policy option or a means for reducing poverty; it is first-and-foremost a duty of States stemming directly from human rights norms and standards, in particular the right to social security and the right to an adequate standard of living.”<sup>389</sup>

The 2010 report also noted that “when establishing or extending social pensions”, the states must “recognize social security as a human right and establish appropriate legal frameworks in domestic law”... “ensure universal access to social security”, and “integrate human rights principles and standards throughout the design, implementation and evaluation of social pensions.”<sup>390</sup> Likewise, the independent expert highlighted that “as a necessary part of a rights-based approach to social pensions, the right to social security must be included in

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<sup>385</sup>*Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rohnik: addendum: follow-up to country recommendations: Afghanistan, Mexico, Peru and Romania*, UN Human Rights Council, A/HRC/10/7/Add.2, (Feb. 24, 2009) available at <http://www.refworld.org/docid/49c78d342.html>.

<sup>386</sup>Leckie, *supra* note 241, at 114 (stressing the need to consult with those most affected by existing housing policies, such as the homeless and the inadequately housed, in developing national housing strategies).

<sup>387</sup>UDHR, Article 22; ICESCR, Article 9.

<sup>388</sup>*Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta*, UN Human Rights Council, A/HRC/7/15, (February 28 2008), available at <http://www.refworld.org/docid/47d163902.html>.

<sup>389</sup>Sepulveda Report, 2010 at para. 51.

<sup>390</sup>Conclusions and Recommendations, Sepulveda Report 2010.

national legal frameworks.”<sup>391</sup> Furthermore, the social security systems should have a complaint system. According to the expert, “[i]ndividuals and organizations should have the right to seek, receive and impart information in a clear and transparent manner.”<sup>392</sup>

During the second working session of the UN Open-Ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons, the independent expert on the question of human rights and extreme poverty sustained that “the right to social security is firmly grounded in international human rights law and that several treaties contain specific references to old age protection through social security schemes.” However, in practice, states are not complying with the obligation to offer the protections that older persons deserve as right-bearers under those human rights instruments. One possible solution is to establish a universal pension structure, which is in line with human rights obligations as it adequately responds to the claim of universality of human rights norms and the principle of equality and non-discrimination, as well as addressing the issue of corruption and the problem of stigma attached, as it could be made available to all who comply with the age requirement.<sup>393</sup> This, of course, does not exclude other options, as long as the system in place ensures equal access to all persons without discrimination.

UDHR Article 25, states “that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>394</sup> Further to articles 22 and 25 of the UDHR, articles 9, 10 and 11 of the ICESCR, the CERD,<sup>395</sup> the CEDAW,<sup>396</sup> article 26 of the CRC,<sup>397</sup> the International Convention for the Protection of Migrant Workers and Their Families,<sup>398</sup> and the CRPD set out a right to social protection.<sup>399</sup>

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<sup>391</sup>Sepulveda Report, 2010 at para. 53.

<sup>392</sup>Sepulveda Report, 2010 at para 77.

<sup>393</sup>G.A. Res. 65/182 (Aug. 1–4 2011) available at [http://social.un.org/ageing-working-group/documents/Chair\\_summary\\_2nd\\_session\\_OEWG\\_final.pdf](http://social.un.org/ageing-working-group/documents/Chair_summary_2nd_session_OEWG_final.pdf).

<sup>394</sup>Universal Declaration of Human Rights, Art. 25(1).

<sup>395</sup>CERD article 5 (iv).

<sup>396</sup>CEDAW Art 11.

<sup>397</sup>Art 26, CRC.

<sup>398</sup>*International Convention for the Protection of Migrant Workers and Their Families*, UN General Assembly, A/RES/45/158, art. 27 (Dec. 18 1990) available at: <http://www.refworld.org/docid/3ae6b3980.html>.

<sup>399</sup>CPRD Art. 28.

Article 9 of the ICESCR describes “the right of everyone to social security, including social insurance.” Regarding this, Lindsay Judge mentions that “it is clear from that Article 9 envisages non-contributory schemes for those who fall outside the ambit of contributory pensions, as well as a system of compulsory old-age insurance.”<sup>400</sup> Article 9 outlines an entitlement and not just a benefit. Because social security payments allow older persons to procure basic needs like food and shelter, social security is an entitlement that the state must provide and protect due to its connection to the acquisition of basic needs for survival.<sup>401</sup> This provision has been further elaborated in CESCR General Comment 6 and in General Comment 19 to produce a number of clearer obligations on states vis-à-vis older people.

As with all rights, states have a duty to uphold equality and non-discrimination, and should endeavor to eliminate sex discrimination.<sup>402</sup> Older women already face higher risk of poverty. Older women may be disproportionately barred from receiving old-age contributory pensions because of years spent outside of the formal labor market, often caring for family.<sup>403</sup> Eligibility criteria are important for transparency of government actions, as well as to ensure equality and non-discrimination.<sup>404</sup> With regard to Iceland, for example, the CEDAW Committee recommended that the state take action to avoid poverty among older women.<sup>405</sup> Current standards for social security<sup>406</sup> enable a decent living and are encouraged.<sup>407</sup> Successful plans are currently more likely to be found in medium-income countries than low-income countries.<sup>408</sup>

UN independent expert on human rights and extreme poverty also underscored that ‘the principle of equality and non-discrimination also requires States to ensure that social pensions are physically... accessible to all older people’. In that sense,

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<sup>400</sup>Lindsay Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* pg. 5 (Jan. 2009).

<sup>401</sup>Eide, *The Right to an Adequate Standard of Living Including the Right to Food, in Economic, Social and Cultural Rights: A Textbook* 94–96 (1995) (emphasizing that the right to social security is particularly important for older persons, the unemployed, and the disabled).

<sup>402</sup>Sepulveda Report, 2010, at para. 36.

<sup>403</sup>UN SG Report on Aging, *supra* note 342, para. 26.

<sup>404</sup>Sepulveda Report, 2010, at para. 77.

<sup>405</sup>Iceland, CEDAW Committee, at para. 250.

<sup>406</sup>*Report of the Special Rapporteur on Adequate Housing A/HRC/10/7/Add.2*, at No. 331 (Feb. 24 2009).

<sup>407</sup>*Report of the Working Group on the Universal Periodic Review - Monaco*, UN Human Rights Council, A/HRC/12/3; A/HRC/WG.6/5/L.2, (Jun. 4 2009) available at <http://www.refworld.org/docid/4a9cdb950.html>.

<sup>408</sup>*Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk: addendum: mission to Tajikistan*, UN Human Rights Council, A/HRC/11/6/Add.2, (Apr. 29, 2009) available at <http://www.refworld.org/docid/4a0bda662.html>.

special measures should be taken to ensure beneficiaries have access to benefits.<sup>409</sup> In addition, the independent expert addressed the accessibility criterion and underscored the states duty of “ensuring that benefits are distributed ... at a reasonable geographic location is part of ensuring accessibility. Limited physical strength and mobility can be a major obstacle for older persons, thus particular attention should be paid to older persons’ opportunity cost in term of transport, loss of labor, or caretaker time.”<sup>410</sup>

A 2012 report of the United Nations High Commissioner for Human Rights (UNHCHR) estimated that “80 percent of the world’s population, many of them older persons, lacks access to any kind of social security.”<sup>411</sup> Also, the independent expert on human rights and poverty stated that “less than 20 percent of older persons are covered by pensions today, and only about 25 percent of the labour force is currently contributing or accruing pension rights.”<sup>412</sup> As Eide has stated, “the right to social security is essential, particularly when a person does not have the necessary property available, or is not able to secure an adequate standard of living through work, due either to unemployment, old age or disability.”<sup>413</sup>

It is noteworthy that the UNHCHR has also pointed out that social protection includes social insurance and social assistance, adjusting to the true cost of living.<sup>414</sup> The independent expert Sepúlveda also indicated that “contributory and non-contributory schemes should be regarded as complementary and mutually reinforce aspects of social protection,”<sup>415</sup> and “social pensions should be seen... as only one component of a broad social protection system.” According to the expert, “in the absence of contributory social security, social assistance and, in particular, the provisions of non-contributory pensions to older persons play a central role in bridging the existing protection gap.”<sup>416</sup> The UNHCHR has also mentioned that

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<sup>409</sup>*Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona*, UN Human Rights Council, A/HRC/11/9, (Mar. 27, 2009) available at <http://www.refworld.org/docid/49f846ff2.html>.

<sup>410</sup>Sepúlveda Report, 2010 at para. 74.

<sup>411</sup>*Report to the Economic and Social Council*, U.N. Econ. and Soc. Council, E/2012/5, 48, (Nov. 14 2011) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/5](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/5).

<sup>412</sup>Sepúlveda Report, 2010, at para 29.

<sup>413</sup>Eide, *Economic, Social and Cultural Rights as Human Rights, in Economic, Social and Cultural Rights: A Textbook* 32 (Asbjorn Eide et al., eds., 1995) (noting that everyone is “the beneficiary of human rights”).

<sup>414</sup>U.N. Econ. and Soc. Council, *Report of the United Nations High Commissioner for Human Rights*, 51, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51). (last visited Oct. 23, 2014).

<sup>415</sup>Sepúlveda Report, 2010, at para. 28.

<sup>416</sup>Sepúlveda Report, 2010, at para 32. (The UN independent expert on the question of human rights and extreme poverty underlined that: “in its general comment No.19 on the right to social security, the CESCR spells out the key features of this right and the content of respective State obligations. It notes that states parties are obliged to ensure progressively the right to social security to all individuals within their territories, providing specific protection for disadvantaged and marginalized individuals and groups.”).

“the right to social security includes contributory and non-contributory benefits, and both cash and in-kind benefits.”<sup>417</sup> For example, in Ecuador, the NGO INREDH emphasized the achievement of the government decision to the government to pay a ‘solidarity bonus’ to elderly persons.<sup>418</sup> The solidarity bonus, while a step in the right direction, has not had as far-reaching results as were hoped.<sup>419</sup>

The CESCR definition of social security includes coverage for all “risks involved in the loss of means of subsistence for reasons beyond a person’s control.”<sup>420</sup> To ensure this right, states must immediately establish old-age insurance programs that would start at an age prescribed by law, but maintain flexibility.<sup>421</sup> Additionally, states must protect the benefits of survivors and orphans upon the death of a pension recipient or person entitled to social security.<sup>422</sup>

The CESCR has highlighted many situations where older persons are not entitled to enjoy their rights under the ICESCR.<sup>423</sup> The CESCR expressed concern with the “lack of the exact percentage of GDP spent on social security”, especially, since “that comprehensive social protection is not available to the vast majority of the population, in particular workers over 55 years of age”, and urged the state party to extend the protection.<sup>424</sup> The CESCR has expressed concern about decreases in state expenditures while the number of older persons in the system is increasing.<sup>425</sup> Since the 1980’s, a number of governments have undertaken

<sup>417</sup>*Report of the United Nations High Commissioner for Human Rights*, U.N. Econ. and Soc. Council, E/2012/51, 50, (Apr. 20 2012) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>418</sup>U.N. General Assembly, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution, Ecuador*, A/HRC/WG.6/1/ECU/3, 48, (Mar. 6 2008) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/113/10/PDF/G0811310.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>419</sup>UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Ecuador*, A/HRC/WG.6/1/ECU/3, (Mar. 6 2008) available at <http://www.refworld.org/docid/4857a6ef0.html>.

<sup>420</sup>General Comment 6, *supra* note 1, para. 26 (stating that the Committee does not specify the type and level of social security protection).

<sup>421</sup>*Id.* at para. 27 (mentioning that establishing some sort of pension or insurance for older persons is in agreement with Article 9 of the Covenant and International Labour Organization social security conventions).

<sup>422</sup>*Id.* at para. 29 (enacting those requirements is necessary in order to place into effect the provisions of Article 9 of the Covenant).

<sup>423</sup>United Kingdom of Great Britain and Northern Ireland, ICESCR, E/1995/22 (1994) 52 at. 294 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1995%2f22%28SUPP%29&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1995%2f22%28SUPP%29&Lang=en). (last visited Oct. 23, 2014).

<sup>424</sup>Zambia, ICESCR, E/2006/22 (2005) 19 at 90 and 112. <http://www.refworld.org/pdfid/474d35ca2.pdf>. (last visited Oct. 23, 2014).

<sup>425</sup>*Report on the Twenty-Fifth, Twenty-Sixth, and Twenty-Seventh Sessions*, CESCR E/2002/22, E/C.12/2001/17 [http://www.bayefsky.com/general/e\\_2002\\_22\\_2002.php](http://www.bayefsky.com/general/e_2002_22_2002.php) (voicing concern that the Jamaican social security scheme excludes a considerable portion of the disadvantaged and marginalized groups in society, including older persons). (last visited Oct. 23, 2014).



measures to reduce spending on social services, and some of the member countries of the Organization for Economic Cooperation and Development, have pursued policies to reduce expenditures on old-age pensions.<sup>426</sup>

In specific examples of its analysis of situations of social security, the CESCR regretted that “the Hong Kong Special Administrative Region has not implemented a number of the recommendations contained in its concluding observations of 2001.”<sup>427</sup> It reiterated its concern for the exclusion of many individuals, including “older persons, from the Mandatory Provident Fund Scheme, due to their inability to make sufficient voluntary contributions.”<sup>428</sup> Further, the CESCR expressed the concern that “under the existing social security system... the levels of benefit are not sufficient to guarantee a decent standard of living and that many low-income persons, in particular older persons, are not covered by the scheme.”<sup>429</sup>

The HR Council has also taken note of some improvements. For example, in the UPR process for Malaysia, reviewing states noted the impressive progress in poverty reduction and in providing social safety nets to older persons.<sup>430</sup> In Korea’s Working Group Report, the reviewing state raised the issue of how the Korea, in addition to providing a social safety net to older persons, addresses the concern expressed by CESCR in 2001 in relation to the hardship caused by family breakdown.<sup>431</sup> The responding state informed that the persons above the age of 65 have a basic old age pension, long-term protection and medical treatment and other job opportunities. Furthermore, subsidies and services are provided to for single-parent families and families in which children are living with their grandparents as well.<sup>432</sup> Ecuador also emphasized their new system for managing comprehensive care programs and creating conditions for comprehensive care in 64 geriatric units as well as training programs for community-based services, providing homes for older persons deprived of liberty.<sup>433</sup>

<sup>426</sup>Report on the World Social Situation, A/60/117, (2005) available at <http://www.un.org/esa/socdev/rwss/docs/2005/rwss05.pdf> (last visited Oct. 23, 2014).

<sup>427</sup>Hong Kong Special Administrative Region (China), ICESCR, E/2002/22 39 at 183, 198. (2001) [http://www.bayefsky.com/general/e\\_2002\\_22\\_2002.php](http://www.bayefsky.com/general/e_2002_22_2002.php). (last visited Oct. 23, 2014).

<sup>428</sup>China (Hong Kong Special Administrative Region), ICESCR, E/2006/22 34 at 207, 213, 215, 219, 225 and 227 (2005) <http://www.refworld.org/pdfid/474d35ca2.pdf>. (last visited Oct. 23, 2014).

<sup>429</sup>Id. at para. 213.

<sup>430</sup>U.N. General Assembly, *Report of the Working Group on the Universal Periodic Review, Malaysia*, A/HRC/11/30, (Oct. 5 2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/60/PDF/G0916360.pdf?OpenElement>.

<sup>431</sup>U.N. General Assembly, *Universal Periodic Review, Republic of Korea*, A/HRC/8/40 53 (May 28 2008) available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/KR/A\\_HRC\\_8\\_40\\_RoK\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/KR/A_HRC_8_40_RoK_E.pdf).

<sup>432</sup>Id. at para. 55.

<sup>433</sup>U.N. General Assembly, *Universal Periodic Review, Ecuador*, A/HRC/20 (May 13 2008) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/133/24/PDF/G0813324.pdf?OpenElement>.

The Report of the Secretary-General on the implementation of the outcome of the World Summit for Social Development highlighted the needs of aging populations with regard to the necessary changes “in current systems for the financing of pensions and long-term care” or, the “future generations of older persons may be left without adequate social protection.”<sup>434</sup> Furthermore, the report stressed that “the social integration policies should seek to reduce inequalities, to promote access to education and health care and to increase the participation and integration of older persons.”<sup>435</sup> Moreover, it mentioned that “the private sector should be encouraged to make investments in social sectors and provide civil society organizations with support to carry out programs,” which “should widen public participation in decision-making by ensuring access of information to citizens and establishing mechanisms for reviewing Government policies”, as well as “the collection of statistics to better identify the most vulnerable groups.”<sup>436</sup>

In the *Note Transmitting the interim Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, the Secretary General suggested that the government should consider the establishment of social safety nets for the most vulnerable groups, including poor persons, women, youth, older persons and persons with disabilities.<sup>437</sup>

## 7. The Right to Health

Everyone has the right to the health and wellbeing of himself and of his family.<sup>438</sup> According to HelpAge International, the area of health care is a domain in which “older persons are frequently subject to discrimination, either by being denied access to services, or receiving substandard or insufficient care on account of their age.”<sup>439</sup> States should give particular attention to securing the right to health,

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<sup>434</sup>U.N. Secretary General, *Follow-up to the implementation of the outcome of the World Summit for Social Development and of the Twenty-Fourth Special Session of the General Assembly*, A/60/80, (May 23 2009) available at [http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy\\_and\\_research/un/60/A\\_60\\_80\\_en.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/60/A_60_80_en.pdf).

<sup>435</sup>Id. at para. 62.

<sup>436</sup>Id.

<sup>437</sup>United Nations General Assembly, *Situation of Human Rights in Myanmar*, A/60/221, (Aug. 12 2005) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/459/65/PDF/N0545965.pdf?OpenElement>; UN Commission on Human Rights, *Situation of Human Rights in Myanmar: Report of the Special Rapporteur, Paulo Sérgio Pinheiro*, E/CN.4/2005/36, 62, (Dec. 2, 2004) available at <http://www.refworld.org/docid/42d66e359.html>.

<sup>438</sup>UDHR, Article 25; CRPD, Article 25; ICESCR, Article 12.

<sup>439</sup>HelpAge Position Paper (Convention), 2009, p. 3.

ensuring equality and non-discrimination.<sup>440</sup> Aging can present a significant challenge to achieving effective health care.<sup>441</sup> Health systems should be responsive to the particular needs of older persons.<sup>442</sup> As stated by the United Nations High Commissioner for Human Rights “in the context of health and end-of-life care, dignity and respect for all human rights is key for the well-being of older persons.”<sup>443</sup>

The General Assembly on the follow-up to the Second World Assembly on Ageing, pointed out that “older persons are entitled to the enjoyment of a satisfactory standard of physical and mental health, with due attention to preventive, curative, rehabilitative and long-term care.”<sup>444</sup> Likewise, the independent expert on human rights and extreme poverty ascertained that without this, “many may fall into a vicious cycle where poor health engenders poverty and poverty engenders poor health.”<sup>445</sup> The independent expert Sepulveda also underlined that “social pensions should be planned and implemented in close coordination with other initiatives aimed at ensuring the enjoyment of the right the highest attainable standard of health by older persons.” And in fact, providing pensions grants an opportunity for better articulation of health services to other government programs.<sup>446</sup>

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<sup>440</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Anand Grover, A/HRC/11/12, (Mar. 31 2009) available at <http://www.refworld.org/docid/49faf7652.html>; *Missions to the World Bank and the International Monetary Fund, and to Uganda* A/HRC/7/11/Add.2 (Mar. 5 2008); UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Paul Hunt: addendum: *Missions to the World Bank and the International Monetary Fund in Washington, D.C. (20 October 2006) and Uganda (4–7 February 2007)*, A/HRC/7/11/Add.2, (Mar. 5 2008) available at <http://www.refworld.org/docid/47da904c2.html>; (Noting older persons affected by leprosy face discrimination in health systems: A/HRC/10/62, 23 February 2009 at (i)); UN Human Rights Council, *Elimination of Discrimination Against Persons Affected by Leprosy and their Family Members: Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/10/62, (Feb. 23 2009) available at <http://www.refworld.org/docid/49c78f842.html>. (last visited Oct. 23, 2014).

<sup>441</sup>U.N. General Assembly, *Implementation of General Assembly Resolution 60/251* (May 31 2007) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/126/94/PDF/G0712694.pdf?OpenElementReport>.

<sup>442</sup>*Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*: A/HRC/7/11, 31 at 42 (Jan. 2008) [http://www.who.int/medicines/areas/human\\_rights/A\\_HRC\\_7\\_11.pdf](http://www.who.int/medicines/areas/human_rights/A_HRC_7_11.pdf).

<sup>443</sup>*Report of the United Nations High Commissioner for Human Rights*, U.N. Econ. and Soc. Council, E/2012/51 53 (Apr. 20 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>444</sup>General Comment 14, para. 34 (noting that exception to these prohibitions should only be taken for the treatment of either mental illness or the prevention of communicable diseases), UN SG Report on Aging, *supra* note 342.

<sup>445</sup>Sepulveda Report, 2010 at para. 17.

<sup>446</sup>Sepulveda Report, 2010 at paras. 90, 91.

According to the Report of the United Nations High Commissioner for Human Rights of April 2012, older persons may face severe health conditions, often over extended periods of time, and are confronted with profound psychosocial and spiritual questions as they face illness or death and physical pain. Persons who live with chronic pain are more likely to suffer from depression or anxiety, according to certain studies.<sup>447</sup> Similarly, the General Assembly has also indicated that “depression is known to be common among older persons, although in developing countries, precise data are scarce.... [a]nd depression, loneliness and anxiety may arise as a result of major life changes such as the death of a spouse or a sudden decline in health” and it “is also considered to be a main factor in explaining the surge in suicide rates among persons aged 75 and over.”<sup>448</sup>

Article 12 of the ICESCR recognizes “the right of everyone to the highest attainable standard of physical and mental health.”<sup>449</sup> It goes on to highlight particular priorities states should consider, including “the prevention, treatment and control of epidemic, endemic, occupational and other diseases” and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>450</sup> States should have review mechanisms in place to address violations of the right to health.<sup>451</sup> In addition, states should maintain adequate training standards for health care professionals.<sup>452</sup> For older persons, this might encourage the mainstreaming of geriatric medicine in medical training and professional programs.

In CESCR General Comment No. 14, which addresses health, there are four core aspects to the right to health. *Availability* refers to the sufficient quantity and sustainable quality of health care facilities, goods, services and programs. *Accessibility* includes the notions of non-discrimination, and physical, economical, and informational accessibility. *Acceptability* refers to cultural appropriateness, including gender sensitivities and data confidentiality. Finally, *quality* refers to the

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<sup>447</sup>Report of the United Nations High Commissioner for Human Rights, U.N. Econ. and Soc. Council, E/2012/51 54 (Apr. 20 2012) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>448</sup>U.N. General Assembly, *Follow-up to the Second World Assembly on Ageing* A/67/188, (July 26 2012) 33 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/442/82/PDF/N1244282.pdf?OpenElement>.

<sup>449</sup>Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: A/HRC/7/11, 31 at 42 (Jan. 2008) [http://www.who.int/medicines/areas/human\\_rights/A\\_HRC\\_7\\_11.pdf](http://www.who.int/medicines/areas/human_rights/A_HRC_7_11.pdf). (last visited Oct. 23, 2014).

<sup>450</sup> Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards*, pg. 6 (Jan. 2009).

<sup>451</sup>General Comment 14, para. 59 (emphasizing the importance of providing adequate judicial reparations to victims of right to health violations, including restitution and compensation, as well as guarantees that the violations will not reoccur) (The Committee also encourages formation of patients' rights associations, consumer forums, and other relevant institutions to address remedy and accountability issues). Id.

<sup>452</sup>Id. at para. 36 (indicating that in order for the States to fulfill their legal obligations to the ICESCR, they must ensure that medical personnel and doctors are adequately trained).

scientifically and medically appropriate production of medical goods, services, facilities, and drugs.<sup>453</sup> The CESCR reaffirms paragraphs 34 and 35 of General Comment No. 6, which reiterates the need for preventative, curative and rehabilitative health treatment for older persons, including rehabilitative measures. Likewise, the CESCR reiterates the recommendations of the Vienna International Plan of Action on Ageing, which took a similar comprehensive view of all stages of health.

Further, in General Comment No. 14, the CESCR describes how accessibility includes health facilities, goods, and services that shall be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as, *inter alia*, older persons, as well as adequate access to buildings for older persons.<sup>454</sup> Furthermore, Lindsay Judge highlighted that “the CRPD may provide some additional protection for older persons who fall into the category of living with a disability,” as well as the “article 25 states that disabled persons have “the right to the highest attainable standard of health without discrimination on the basis of disability.”<sup>455</sup> Access to the right to health should not be based on any type of discrimination, and older persons should enjoy access on an equal basis to others.

Health care data must be disaggregated by age in order to realize a progressive right to health.<sup>456</sup> Addressing these issues will create an overall better life for the aging. In order to respect the right to health, the CESCR noted that states should refrain from denying elderly persons access to health services, and from prohibiting or impeding traditional preventative care.

Development of home care services for older persons should be a priority.<sup>457</sup> In this regard, the General Assembly has pointed out that “the health-care systems of developing countries were established to focus primarily on combating communicable diseases, and they remain poorly adapted to, and have insufficient resources for, the care and prevention of chronic diseases.”<sup>458</sup> Family members should be allowed to accompany injured elderly persons in their receipt of health care.<sup>459</sup>

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<sup>453</sup>General Comment 14, para. 12(a)-(d) (defining the essential elements of the right to health).

<sup>454</sup>Id. at 128 paras. 12(b)(ii) and 25.

<sup>455</sup>Id. at pg. 6.

<sup>456</sup>*Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: A/HRC/7/11*, 31 at 42 (Jan. 2008). [http://www.who.int/medicines/areas/human\\_rights/A\\_HRC\\_7\\_11.pdf](http://www.who.int/medicines/areas/human_rights/A_HRC_7_11.pdf). (last visited Oct. 23, 2014).

<sup>457</sup>*Report of the Special Rapporteur on Adequate Housing A/HRC/10/7/Add.2*, at no. 331 (February 24 2009) (last visited Oct. 23, 2014).

<sup>458</sup>U.N. Secretary General, *Follow-up to the Second World Assembly on Ageing*, A/67/188, 35, (July 26 2012) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/442/82/PDF/N1244282.pdf?OpenElement>.

<sup>459</sup>UN Human Rights Council, *Report of the High-Level Fact-Finding Mission to Beit Hanoun: established under Council resolution S-3/1*, A/HRC/9/26, at (a) (Sept. 1 2008) available at: <http://www.refworld.org/docid/48cfa3a22.html>.

Both patent holders and pharmaceutical companies have a right-to-health responsibility to ensure that medicines are developed for, among others, older persons.<sup>460</sup> Pharmaceutical companies should give proper attention to the needs of older persons in clinical trials and with informed consent.<sup>461</sup> Furthermore, the CESCR notes that states should provide older persons with up-to-date health information, maintain the confidentiality of personal health data<sup>462</sup> and strive to ensure “facilities, goods, and services are physically accessible, near in proximity, and affordable to older persons.”<sup>463</sup> States should refrain from interfering with an elderly person’s decision regarding his or her medical treatment. “Information should be tailored to suit their needs and communicated to them in an appropriate, comprehensible manner allowing them to make fully informed decisions about their health condition and treatment.”<sup>464</sup> Where disability prevents unassisted decision-making, the CRPD requires support.<sup>465</sup>

Responsibility for the enforcement of health rights lies with the state. Japan, for example, has been received positively for high legal protections for vulnerable groups, including, expressly, older persons, and delineating rights including the quality of life of older persons, affording a right to health.<sup>466</sup> Health rights are also related to the right to adequate food, housing, water, working conditions, and environment, since the reduction of malnutrition and other inadequacies in these areas increase an individual’s chance to enjoy a healthy life.<sup>467</sup> Toward this end, national

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<sup>460</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Paul Hunt: annex: mission to GlaxoSmithKline, A/HRC/11/12/Add.2, (May 18 2009), available at <http://www.refworld.org/docid/4a1d0af22.html>.

<sup>461</sup>*Id.* at 23.

<sup>462</sup>General Comment 14, para. 12(b) (explaining that accessibility of information and ideas concerning health issues should not encroach upon the right to confidentiality).

<sup>463</sup>*Id.* (stating that potable water and sanitation facilities should be physically accessible, even in rural areas). Health services should also be affordable for all, including socially disadvantaged groups. *Id.*

<sup>464</sup>UN Human Rights Council, *Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/18/37, **25** (July 4 2011) available at <http://www.refworld.org/docid/4e7322ac2.html>.

<sup>465</sup>Convention on the Rights of Persons with Disabilities, Article 12.2.

<sup>466</sup>A/HRC/8/44 Japan’s Working Group Report UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Japan*, A/HRC/8/44; A/HRC/WG.6/2/L.10, (May 30 2008), available at <http://www.refworld.org/docid/485b962fd.html>.

<sup>467</sup>The Right to the Highest Attainable Standard of Health: General Comment 14, U.N. ESCOR, Econ., Soc., & Cultural Rts. Comm., U.N. Doc. E/C.12/2000/4 4 (2000) (explaining that the reference to the “highest attainable standard of physical and mental health” in the International Covenant on Economic, Social and Cultural Rights expands beyond the right to health care). [hereinafter General Comment 14].

health plans should address older women's' specific health issues as equal to other, predictable health issues throughout the life course.<sup>468</sup>

In order to guarantee these rights adequately, the CESCR declares that states provide access to facilities, goods, and services without any discrimination based on age, sex or financial ability.<sup>469</sup> Discrimination in this area involves not only discrimination based on impaired health, which particularly affects older persons, but also discrimination in the diagnosis (or failed diagnosis) of disease or mental illness.<sup>470</sup> States need to enforce non-discrimination and the right to health, ensuring the right to health encompasses states' duties to:

implement preventative measures to reduce occupational accidents and diseases; to provide an adequate supply of safe, potable water as well as basic sanitation; to reduce and prevent the exposure of the population to dangerous substances such as radiation, harmful chemicals, or other detrimental environmental conditions; to minimize health hazards in industrial workplaces; to administer checkups for older persons on a regular basis, giving special attention to chronically and terminally ill persons.<sup>471</sup>

During the UPR process, a reviewing state recommended in Cuba's Working Group Report that Cuba share its experiences and good practices with regard to the right to health, in particular in the view of the growing aging population.<sup>472</sup> Also, in regard to Malaysia, the reviewing state emphasized that in order to meet the healthcare demands of an increasingly aging population, the state t worked to provide geriatric services in all government hospitals.<sup>473</sup> The United Arab Emirates Working Group Report noted that rapid advancement in health-care facilities had led to increased life expectancies for men and women,<sup>474</sup> though they were requested to provide more information on healthcare systems for the aged.<sup>475</sup>

<sup>468</sup>See General Comment 14, paras. 20–21 (advocating the integration of a gendered perspective in health related policies).

<sup>469</sup>ICESCR, Article 12, The Right to Health; ICESCR Article 2.2, (noting that the right to non-discrimination applies to all rights enumerated in the ICESCR).

<sup>470</sup>See Katarina Tomashevski, *Health Rights, in Economic, Social and Cultural Rights: A Textbook* 140–41 (Asbjorn Eide et al., eds., 1995) (recounting how, in the past, non-conformity with moral, social, cultural, or political values had been a factor in diagnosing mental illness).

<sup>471</sup>Diego Rodriguez-Pinzon and Claudia Martin, *supra* note 254 (discussing General Comment 14 paras. 15, 25 providing general commentary on Article 12 of the ICESCR).

<sup>472</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Cuba*, A/HRC/WG.6/4/L.8; A/HRC/11/22, 26 (Mar. 3 2009), available at <http://www.refworld.org/docid/49f964ee0.html>.

<sup>473</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Malaysia*, A/HRC/WG.6/4/L.16; A/HRC/11/30, 97 (Mar. 3 2009) available at <http://www.refworld.org/docid/49f964f10.html>.

<sup>474</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - United Arab Emirates*, A/HRC/10/75; A/HRC/WG.6/3/L.7, 9 (Jan 12 2009), available at <http://www.refworld.org/docid/497476a40.html>.

<sup>475</sup>Id at para. 41.



Finally, the Working Group Report on the Democratic Persons' Republic of Korea indicated that human rights violations have created severe problems of malnutrition and other generalized health issues for the population and older persons.<sup>476</sup> The Special Rapporteur on the Right to Health noted in his concluding remarks on the right to health for older persons that healthy aging is the beginning; the goal is truly "active and dignified aging, which should be planned and supported just like any other stage of the individual's life course."<sup>477</sup>

The 2009 Final Report of the Third Committee called upon Member States to "address the well-being and adequate health care of older persons by designing more effective prevention strategies, stronger laws and policies to address these problems and their underlying factors."<sup>478</sup> The report also called "upon governments to ensure conditions that enable families and communities to provide care and protection to persons as they age and evaluate improvement in the health status of older persons, including on a gender-specific basis."<sup>479</sup> The Third Committee has also declared that "states must ensure access to adequate health care services and address other underlying determinants of health, such as access to safe drinking water and food."<sup>480</sup> Similarly, the Report of the Secretary General on the follow-up to the Second World Assembly on Ageing highlighted a resolution of the fifty-eighth World Health Assembly "strengthening, active, and healthy aging"<sup>481</sup> by which it urged member states to strengthen national action in order to fulfill commitments to implementing the MIPAA and related regional plans of action relating to the health and well-being of older persons. The Assembly also requested the Director-General of WHO to strengthen the organization's capacity to incorporate work on aging throughout its activities and programs at all levels.<sup>482</sup>

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<sup>476</sup>UN General Assembly, *Promotion and Protection of Human Rights: Human Rights Situations and Reports of Special Rapporteurs and Representatives: Report of the 3rd Committee: General Assembly, 63rd session, A/63/430/Add.3*, (Dec. 5 2008) available at <http://www.refworld.org/docid/4c46bd212.html>.

<sup>477</sup>UN Human Rights Council, *Thematic Study on the Realization of the Right to Health of Older Persons by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Anand Grover, A/HRC/18/37, para. 71. (July 4 2011) available at <http://www.refworld.org/docid/4e7322ac2.html>.

<sup>478</sup>U.N. General Assembly, *Social Development: Report of the Third Committee, A/64/432 13* (Dec. 1, 2009) <http://www.copac.coop/iyc/a-64-432-excerpt.pdf>.

<sup>479</sup>U.N. General Assembly, *Follow-up to the Second World Assembly on Ageing*, A/C.3/64/L.6 8 (Oct. 7 2009) available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/37/PDF/N0954737.pdf?OpenElement>.

<sup>480</sup>Conclusions and Recommendations, Sepulveda Report, 2010.

<sup>481</sup>*Fifty-eighth World Health Assembly* WHA58.16 (May 16–25 2005) [http://apps.who.int/gb/ebwha/pdf\\_files/WHA58-REC1/english/A58\\_2005\\_REC1-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA58-REC1/english/A58_2005_REC1-en.pdf).

<sup>482</sup>U.N. Secretary General, *Second Review and Appraisal of the Madrid International Plan of Action on Ageing 2002*, E/CN.5/201/5 38, (Nov. 3 2011) available at <http://www.un.org/ga/60/third/docslist.htm>.

The follow-up to the World Summit for Social Development and the XXIV special session of the General Assembly review of the relevant UN plans and programs of action pertaining to the situation of social groups, established that

access to preventive and curative care, the training of personnel and the adaptation of facilities to meet the special needs of older populations are key policy initiatives. Given the acknowledged importance of good health, efforts to expand and improve specific areas of health care for older persons have been established as a priority, although mainly in developed countries.<sup>483</sup> Furthermore, the follow-up report indicated that “the promotion of healthy living practices and equal access of older persons to health care and services that include disease prevention throughout the lifespan is the cornerstone of healthy aging.”<sup>484</sup>

## E. Rights of Older Persons as Members of Other Vulnerable Groups

As mentioned by the General Assembly regarding the realization of the right to health, General Comment No. 14 considers older persons to be a group especially vulnerable to human rights violations.<sup>485</sup> The condition of vulnerability requires special attention to ensure the necessary autonomy to guarantee individual choice of models of care, to the extent possible.<sup>486</sup>

Equality and non-discrimination are at the core of the recognition of the heightened need for state protection of vulnerable groups’ rights. Historical discrimination, diminished representation in decision-making and barriers to political participation are all factors for singling out a group as vulnerable. The language of vulnerability is a common thread in human rights discourse.<sup>487</sup> The argument that

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<sup>483</sup>U.N. Secretary General, *Second Review and Appraisal of the Madrid International Plan of Action on Ageing 2002*, E/CN.5/2012/5, 64, (Nov. 3 2011) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/579/60/PDF/N1157960.pdf?OpenElement>.

<sup>484</sup>Id. at para. 65.

<sup>485</sup>UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Covenant), E/C.12/2000/4, (Aug. 11 2000) **25** available at: <http://www.refworld.org/docid/4538838d0.html>.

<sup>486</sup>U.N. General Assembly, *Thematic Study on the Realization of the Right to Health of Older Persons by Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Anand Grover, A/HRC/18/37 28 (July 4 2011) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/143/61/PDF/G1114361.pdf?OpenElement>.

<sup>487</sup>See, e.g., UN Human Rights Council, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Bahrain*, A/HRC/WG.6/1/BHR/2, (Mar. 14 2008), available at <http://www.refworld.org/docid/4856827f0.html>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Russian Federation*, A/HRC/11/19, (Mar. 3 2009) available at: <http://www.refworld.org/docid/49f964f3d.html> (Algeria noting the need for further efforts to protect rights for vulnerable groups). South Africa’s Working Group Report A/HRC/WG.6/1/ZAF/2, (Apr. 11 2008) available at <http://www.hrw.org/reports/2008/southafrica0608/8.htm> (CAT recommending that legal aid for vulnerable groups be strengthened).

older persons should be “recognized as a distinct group requiring special attention and care” is not a new one by any means.<sup>488</sup> However, the recognition has gained increasing attention in the past few years.<sup>489</sup> The General Assembly has restated that “a study undertaken by HelpAge International in 2010 found that only 93 out of 1,912 humanitarian assistance projects surveyed explicitly addressed older persons as a vulnerable group.”<sup>490</sup>

It is worth noting that not all older persons are vulnerable in the same way, for example, not all children or persons with disabilities are considered to be in a situation of exclusion or marginalization by merely belonging to a ‘vulnerable group’. But, in general, it is recognized that they may need special protection in many challenging circumstances in which their inherent vulnerability exposes them to more hardship than other groups. It is also important that the classification of vulnerability is identified, in a specific context, as an important if sometimes socially-constructed source of discrimination, isolation, poverty, and disempowerment. The conventions on the rights of women, children, and persons with disabilities, among others, were established on the recognition that these groups needed special assistance to ensure the protection and fulfilment of the rights enshrined in existing conventions for these persons.<sup>491</sup> The United Nations General Assembly emphasizes non-discrimination as a part of the UDHR, and the legal frameworks for the protection of vulnerable groups’ rights to employment, food, social development, social integration, cultural participation and accessibility.

Multiple discriminations can be the source of compounded violations of older persons’ rights, if we consider that older persons also make up a large portion of all vulnerable groups.<sup>492</sup> For example, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous persons has noted that government reparations for wrongful actions against indigenous populations can and should be expedited for older persons, who are more likely to face circumstances of extreme need.<sup>493</sup> The HR Council recommends the continued raising of aware-

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<sup>488</sup>Chung Working Paper, 2010, para. 45.

<sup>489</sup>See, e.g. Human Rights Council, *Thematic Study on the Realization of the Right to Health of Older Persons by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Anand Grover, A/HRC/18/37 (July 4 2011) available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37_en.pdf).

<sup>490</sup>U.N. Secretary General, *Second Review and Appraisal of the Madrid International Plan of Action on Ageing 2002*, E/CN.5/2012/5 63, (Nov. 3 2011) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/579/60/PDF/N1157960.pdf?OpenElement>.

<sup>491</sup>Chung Working Paper, 2010, para. 5.

<sup>492</sup>General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts. 11 and 12 of the Covenant), ICESCR E/2003/22 (2002) 120 at 16(h), General Comment 5, and General Comment 6.

<sup>493</sup>UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Study Regarding Best Practices Carried out to Implement the Recommendations Contained in the Annual Reports of the Special Rapporteur*, A/HRC/4/32/Add.4, (Feb. 26 2007), available at <http://www.refworld.org/docid/4623896f2.html>.

ness among traditional communities about the protection and promotion of the rights of older people, particularly the multiple discriminations faced by elderly women.<sup>494</sup> The Human Rights Committee has recommended human rights education in accordance with Articles 2(1) and 26 where vulnerable groups' rights are being exploited.<sup>495</sup>

The CESCR notes that economic and social disparities have particular effect on vulnerable groups, including, expressly, older persons,<sup>496</sup> who are particularly prone to unequal distribution of poverty in the first place.<sup>497</sup> It further urges efforts for greater economic, social and cultural rights for all vulnerable groups including, expressly, older persons.<sup>498</sup> The CESCR encourages participation,<sup>499</sup> and condemns legislation restricting the rights of vulnerable groups based on public opinion trends.<sup>500</sup>

A lack of state action to combat discrimination threatens vulnerable groups.<sup>501</sup> The HR Council emphasizes state facilitation of a policy of participation as a remedy for curtailed civil, cultural, economic, political, and social rights, and poverty in its Forum on Minority Issues.<sup>502</sup> The CAT emphasizes the elimination of police discrimination against all vulnerable groups, as well as their torture and ill treatment, and recommends steps to ensure the physical integrity of vulnerable

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<sup>494</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Burkina Faso*, A/HRC/10/80; A/HRC/WG.6/3/L.12, (Jan. 7 2009) available at <http://www.refworld.org/docid/497476a80.html>.

<sup>495</sup>*Report of the Human Rights Committee Volume I India*, ICCPR, A/52/40 vol. I (1997) 67 at 430 available at [http://www.ccprcentre.org/wp-content/uploads/2012/04/A\\_52\\_40Vol-I\\_en.pdf](http://www.ccprcentre.org/wp-content/uploads/2012/04/A_52_40Vol-I_en.pdf). (last visited Oct. 23, 2014).

<sup>496</sup>Guatemala, ICESCR, E/1997/22 29 at 127 (1996) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G97/161/19/PDF/G9716119.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>497</sup>*Report of the UN Committee on Economic, Social and Cultural Rights, Twenty-eighth and Twenty-ninth Sessions (29 April - 17 May 2002, 11-29 November 2002)* CESCR, E/2003/22; E/C.12/2002/13, 39 at 221 (June 23 2003), available at <http://www.refworld.org/docid/3f6b10ea4.html>.

<sup>498</sup>Australia, ICESCR, E/1994/23 36 at 159 (1993) [http://www.bayefsky.com/general/e\\_1994\\_23.pdf](http://www.bayefsky.com/general/e_1994_23.pdf). (last visited Oct. 23, 2014).

<sup>499</sup>Poland, ICESCR, E/1993/22 32 at 132 (1992) [http://www.bayefsky.com/general/e\\_1993\\_22.pdf](http://www.bayefsky.com/general/e_1993_22.pdf). (last visited Oct. 23, 2014).

<sup>500</sup>United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICESCR, E/1997/22 58 at 337 (1996) [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1997%2f22%28SUPP%29&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2f1997%2f22%28SUPP%29&Lang=en). (last visited Oct. 23, 2014).

<sup>501</sup>*Human Rights Committee Annual Report to the U.N. General Assembly, Romania*, ICCPR, A/49/40 vol. I (1994) 28 at 140 <http://www1.umn.edu/humanrts/hrcommittee/hrc-annual94.htm>. (last visited Oct. 23, 2014).

<sup>502</sup>U.N. General Assembly, *Human Rights Council Forum on Minority Issues Second session Geneva, 12-13 November 2009 Note by the Independent Expert on Minority Issues, Gay McDougall, on Minorities and Effective Political Participation* [http://www.univie.ac.at/bimtor/dateien/greece\\_cat\\_2001\\_concoba.pdf](http://www.univie.ac.at/bimtor/dateien/greece_cat_2001_concoba.pdf) (last visited Oct. 23, 2014).

groups.<sup>503</sup> The United Nations Department of Economic and Social Affairs notes the need for equality and non-discrimination for vulnerable groups in its 2005 Report on the World Social Situation.<sup>504</sup> In Croatia's Working Group Report, the CERD emphasized the need for continuous monitoring of vulnerable or disadvantaged groups within minority communities to identify areas for improvement, and efforts targeted for the most vulnerable groups so that the government can measure and act accordingly.<sup>505</sup>

The Third Committee of the GA also asserted in the 2009 Final Report its ongoing commitment to vulnerable groups, reducing vulnerability of older persons, and developing cooperatives to enable the meeting of social service needs for vulnerable groups and, expressly, older persons.<sup>506</sup> Similarly, the UN Secretary General observed a number of actions pertinent to vulnerable groups. This included the need for targeted assistance, the need for improved law and social development programs that work toward social integration,<sup>507</sup> and they encouraged UN bodies to monitor the situations of vulnerable groups.<sup>508</sup>

Individual state comments during the UPRs often include praise for or recognition of shortcomings in connection with being a party to individual human rights treaties, individual states' domestic legal standards, mechanisms and institutions to monitor implementation and efforts to protect vulnerable groups. These state comments have included praise for preventing discrimination against vulnerable groups,<sup>509</sup> and note

<sup>503</sup>Greece, CAT, A/56/44 (2001) 38 at 88. <http://www.unhchr.ch/tbs/doc.nsf/0/336a0d9ee8c62b8ec1256a4800558d6f?OpenDocument>. (last visited Oct. 23, 2014).

<sup>504</sup>Report on the World Social Situation, Dep't of Econ. and Soc. Affairs (2005) available at <http://undesadspd.org/reportontheworldsocialsituation.aspx>.

<sup>505</sup>Croatia, Comm. On the Elimination of Racial Discrimination, A/48/18 90 at 504 (1993) available at [http://www.bayefsky.com/html/croatia\\_cerd\\_spec\\_dec.php](http://www.bayefsky.com/html/croatia_cerd_spec_dec.php). (last visited Oct. 23, 2014).

<sup>506</sup>Final Report of the Third Committee A/64/432 (2009) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/627/09/PDF/N0962709.pdf?OpenElement> (last visited Oct. 23, 2014).

<sup>507</sup>*Report of the Secretary-General on the implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly A/60/117* (July 13 2005) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/418/73/PDF/N0541873.pdf?OpenElement>.

<sup>508</sup>U.N. Secretary General, *Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities A/60/333* (Sep. 6, 2005) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/481/36/PDF/N0548136.pdf?OpenElement>.

<sup>509</sup>See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Bangladesh*, A/HRC/WG.6/4/L.4, A/HRC/11/18, (Mar. 3 2009), available at <http://www.refworld.org/docid/49f964eb0.html>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Chile*, A/HRC/12/10; A/HRC/WG.6/5/L.9, (June 4, 2009) available at <http://www.refworld.org/docid/4a9cdb920.html>. (Czech Republic urging the approval of a draft refugee law according special attention to vulnerable groups to prevent discrimination).

the need of state action to protect human rights of vulnerable groups, including, expressly, older persons.<sup>510</sup>

During the UPR process, Macao Special Administrative Region (MSAR) of the Persons' Republic of China considered the rights of vulnerable groups, including, expressly, older persons.<sup>511</sup> The Philippines reports that it has constitutional provisions recognizing the rights of older persons.<sup>512</sup> Sri Lanka acknowledges the importance of development for social protection of vulnerable groups, including, expressly, older persons.<sup>513</sup> Some states have even requested reporting on specific efforts for vulnerable groups, including, expressly, older persons.<sup>514</sup> These comments provide an important window into the developing norms around the rights of older persons and how states view their international commitments when specifically addressing the rights of older persons.

## ***1. The Rights of Older Refugees and Other Persons in Emergencies***

CRPD in article 11 provides that persons with disabilities, as all people, have equal rights to humanitarian relief following a natural disaster or conflicts.<sup>515</sup> Older persons are also entitled to that right, on equal footing with others. Old age

<sup>510</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Cameroon*, A/HRC/WG.6/4/L.7, A/HRC/11/21, (Mar. 3 2009), available at <http://www.refworld.org/docid/49f964ebd.html>.

<sup>511</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - China*, A/HRC/WG.6/4/L.11; A/HRC/11/25, (Mar. 3 2009), available at <http://www.refworld.org/docid/49f964ed0.html>.

<sup>512</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - The Philippines*, A/HRC/8/28; A/HRC/WG.6/1/PHL/4, (May 23 2008) available at <http://www.refworld.org/docid/4857aa21d.html>.

<sup>513</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Sri Lanka*, A/HRC/8/46; A/HRC/WG.6/2/L.12, (June 5 2008) available at <http://www.refworld.org/docid/485b96310.html>.

<sup>514</sup>Mauritius' Working Group Report, A/HRC/11/28 (The Holy See requesting further information); A/HRC/12/3 Monaco's Working Group Report, (Philippines asking for specifics as to the practices and policies regarding vulnerable groups, including, expressly, older persons). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Mauritius*, A/HRC/WG.6/4/L.14; A/HRC/11/28, (Mar. 3 2009), available at: <http://www.refworld.org/docid/49f964f1d.html> (note from Korea in A/HRC/10/75 United Arab Emirates Report of Working Group (encouraging specific measures to ensure the rights of older persons and disabled). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - United Arab Emirates*, A/HRC/10/75; A/HRC/WG.6/3/L.7, (Jan. 12 2009) available at <http://www.refworld.org/docid/497476a40.html>.

<sup>515</sup>CRPD, Article 11.



can result in decreased mobility, sight, hearing, and muscle strength, as well as in greater vulnerability to heat and cold.<sup>516</sup> Humanitarian actors have a duty to recognize the limited mobility of many groups. As the UNHCR guidelines for best practices regarding older persons in disaster and humanitarian crisis state: “The first key principle of good practice is to be aware of the presence of older persons in an emergency and take active steps to locate and identify them.”<sup>517</sup> The guidelines also points out that “[l]imited mobility can create severe problems for older persons in crises.”<sup>518</sup> According to research done by HelpAge International, four main problems were identified: incapacity to gain access to essential services; physical limitations; lack of transportation; and the loss of mobility aids, prostheses and glasses in the emergency.<sup>519</sup>

Article 4 of the ICCPR stipulates that in time of public emergency state parties may take measures derogating from certain of their obligations under the ICCPR. According to that provision, however, certain rights are non-derogable even in times of public emergency. When faced with situations of armed conflict, the HRC will necessarily examine whether these state parties complied with all of their ICCPR obligations and whether they have satisfied the conditions of Article 4 of the ICCPR.<sup>520</sup> Any derogation must be immediately brought to the attention of state parties through the intermediary of the Secretary-General and further notification is required upon the termination of the derogation.<sup>521</sup>

The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War defines humanitarian protections for civilians in a war zone, and prohibits the practice of total war.<sup>522</sup> Article 14 further states that in time of peace, and after the outbreak of hostilities, the states may establish in their own territory and, if the need arises in occupied areas, hospitals, and safety zones the means to

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<sup>516</sup>*Humanitarian Action and Older Persons - An essential brief for humanitarian actors, Initiated by WHO and HelpAge International at the request of the Inter-Agency Standing Committee (IASC) Working Group, Inter Agency Standing Comm., 3 (2008) available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.humanitarianinfo.org%2Fiasc%2Fdownloaddoc.aspx%3FdocID%3D4514%26type%3Dany&ei=0PPrUovlHO\\_IsAS6loHQDg&usq=AFQjCNFyiwgv37XBNA08RCVmiNUpb8xObg&sig2=mCQVCLHQYyNHSj5VMowGuA&bvm=bv.60444564,d.cWc](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.humanitarianinfo.org%2Fiasc%2Fdownloaddoc.aspx%3FdocID%3D4514%26type%3Dany&ei=0PPrUovlHO_IsAS6loHQDg&usq=AFQjCNFyiwgv37XBNA08RCVmiNUpb8xObg&sig2=mCQVCLHQYyNHSj5VMowGuA&bvm=bv.60444564,d.cWc)*.

<sup>517</sup>*See, HelpAge International, Older People In Disasters and Humanitarian Crises, UNHCR, 3 available at <http://www.refworld.org/pdfid/4124b9f44.pdf>.*

<sup>518</sup>*Id.* at 5.

<sup>519</sup>*Id.*

<sup>520</sup>U.N. General Assembly, *Report of the Human Rights Committee, Fifty-Sixth Session, Supplement No. 40, A/56/40*, available at [http://www.ccrpcentre.org/wp-content/uploads/2012/04/A\\_56\\_40Vol-I\\_en.pdf](http://www.ccrpcentre.org/wp-content/uploads/2012/04/A_56_40Vol-I_en.pdf). (last visited Oct. 23, 2014). <http://tb.ohchr.org/default.aspx> searching “CCPR” and “Sessional/Annual Report of Committee”.

<sup>521</sup>Article 4, para. 3.

<sup>522</sup>*Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Int’l Comm. Of the Red Cross (ICRC) 75 UNTS 287 (Aug. 12, 1949) available at <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.



protect from the effects of war, wounded, sick and as well as, inter alia, aged persons. Additionally, in accordance to Article 17, the parties to the conflict shall endeavor to conclude local agreements for the removal from besieged or encircled areas, of, inter alia, aged persons, and for the passage of ministers of all religions, medical personnel, and medical equipment on their way to such areas. A Report of the UNHCR emphasizes the obligation of all states and parties to armed conflicts to protect civilians in accordance with international humanitarian law, and invited states to promote a culture of protection, taking into account the particular needs of, among others, older persons.<sup>523</sup>

The rights of older refugees are specifically recognized in the Convention relating to the Status of Refugees, in particular the provisions related to the labor legislation and social security.<sup>524</sup> According to Article 24, the state parties shall guarantee to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of, among others, social security including legal provisions in respect of old age, death, unemployment, family responsibilities and any other contingency, which, according to national laws or regulations, is covered by a social security.

UNHCR notes the particular need for ongoing protection of vulnerable groups within refugee groups. It further notes the particular need for ongoing protection of vulnerable groups within refugee groups, as well as the particular needs of vulnerable groups within refugee groups.<sup>525</sup> Older internally displaced persons (IDP's) in West Africa have been identified as requiring special attention.<sup>526</sup> The deprivation of older persons is one clear negative impact of food crises.<sup>527</sup> There, immediate food needs are closely related to the shortage of fertilizers and fuel.<sup>528</sup> Furthermore, the UNOCHA Guiding Principles on Internal Displacement, in Principle 4, indicate that

<sup>523</sup>U.N. General Assembly, *Report of the United Nations High Commissioner for Refugees, Questions Relating to Refugees, Returnees and Displaced Persons and Humanitarian Questions*, A/59/498 (Dec. 2 2004) available at (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/632/89/PDF/N0463289.pdf?OpenElement>).

<sup>524</sup>U.N. High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, available at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>. (last visited Oct. 23, 2014).

<sup>525</sup>U.N. General Assembly, *Report of the United Nations High Commissioner for Refugees, Questions Relating to Refugees, Returnees and Displaced Persons and Humanitarian Questions*, A/59/498 (Dec. 2 2004) available at (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/632/89/PDF/N0463289.pdf?OpenElement>).

<sup>526</sup>UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, First Regional Conference on Internal Displacement in West Africa (Abuja - 26–28 April 2006)*, A/HRC/4/38/Add.4, (Feb. 20 2007), available at <http://www.refworld.org/docid/461f8e2c2.html>.

<sup>527</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn*, A/HRC/10/18, at no. 49 (Feb. 24 2009) available at <http://www.refworld.org/docid/49c8ef179843.html>.

<sup>528</sup>*Id.*

Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.<sup>529</sup>

Furthermore, older persons face situations in which they can suffer violations in an institutional, community, and family environment.<sup>530</sup> In an emergency, whether a natural disaster or armed conflict, the breakdown of social institutions can lead to abandonment, loss of family and community support, leaving them specially exposed to chaotic situations.<sup>531</sup> Their vulnerable condition can leave them marginalized and disenfranchised. The state must seek to adopt special measures where older persons face inaccessibility or limited of mobility to access essential services.<sup>532</sup> In situations of armed conflict, they are frequently targets of violence and reprisals. They are often among the least mobile, making them the least able to flee and the least able to get to places of safety and centers in camps to be registered for inclusion in food and health programs.<sup>533</sup>

Priority should be given to older persons in emergencies for food relief.<sup>534</sup> The right of older persons to have their basic needs addressed in disasters must be secured by the state concerned, with its ultimate responsibility to protect the rights of its people.<sup>535</sup>

In planning for displaced persons it is necessary to always keep in mind the needs and capabilities of older persons when designing programs that seek to overcome a crisis.<sup>536</sup> In emergency situations it is essential to ensure that older

<sup>529</sup>UNOCHA, Guiding Principles on Internal Displacement (2004) available at <http://www.brookings.edu/~media/Projects/idp/GPEnglish.pdf>. (last visited Oct. 23, 2014).

<sup>530</sup>A *Global Response to Elder Abuse and Neglect: Building Primary Health Care Capacity to Deal with the Problem Worldwide: Main Report*, World Health Org., 2008, available at [http://whqlibdoc.who.int/publications/2008/9789241563581\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/2008/9789241563581_eng.pdf?ua=1) (last visited October 28, 2014).

<sup>531</sup>HelpAge International, *Older People in Disasters and Humanitarian Crises: Guidelines for Best Practice*, UNHCR, 9 (2000) available at <http://www.refworld.org/docid/4124b9f44.html>. (last visited Oct. 23, 2014).

<sup>532</sup>Id. at 5 and 7.

<sup>533</sup>Chung Working Paper, 2010, para. 20.

<sup>534</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, Vitit Muntarbhorn, A/HRC/10/18, at no. 11 (Feb. 24 2009) available at <http://www.refworld.org/docid/49c8ef179843.html>.

<sup>535</sup>UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, Tomás Ojea Quintana, on the implementation of Council resolutions S-5/1 and 6/33, A/HRC/8/12, (Jun. 3 2008) available at <http://www.refworld.org/docid/484d11142.html>.

<sup>536</sup>*Humanitarian Action and Older Persons - An essential brief for humanitarian actors*, Initiated by WHO and HelpAge International at the request of the Inter-Agency Standing Committee (IASC) Working Group, Inter Agency Standing Comm., 4 (2008) available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.humanitarianinfo.org%2Fiasc%2Fdownloaddoc.aspx%3FdocID%3D4514%26type%3Dany&ei=0PPrUovlHO\\_IsAS6loHQDg&usg=AFQjCNFiywgv37XBNA08RCVmiNUpb8xObg&sig2=mCQVCLHQYyNHSj5VMowGuA&bvm=bv.60444564,d.cWc](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.humanitarianinfo.org%2Fiasc%2Fdownloaddoc.aspx%3FdocID%3D4514%26type%3Dany&ei=0PPrUovlHO_IsAS6loHQDg&usg=AFQjCNFiywgv37XBNA08RCVmiNUpb8xObg&sig2=mCQVCLHQYyNHSj5VMowGuA&bvm=bv.60444564,d.cWc). (last visited Oct. 23, 2014).

persons are able to participate in the decision-making process, design, and implementation of recovery programs. Income generation and repatriation programs must always take into account the specificities of older persons in caring for themselves and for other persons.<sup>537</sup> UNHCR has recognized the positive contribution of older persons in times of crisis<sup>538</sup> and has researched the amelioration of gaps in the protection of older refugees.<sup>539</sup>

The special needs of older IDP's should be identified and addressed in all phases of displacement.<sup>540</sup> Among the internally displaced, especially during wintertime, access to adequate housing is extremely important for older persons.<sup>541</sup> It is recommended that states should relax naturalization requirements, in particular language proficiency exams, for older persons.<sup>542</sup>

Older displaced persons have more serious health problems than the non-displaced due to problems of adaptation, poverty, and changing family care dynamics, limiting intergenerational support, among others.<sup>543</sup> UNHCR has called for a review of health services for older populations with non-communicable diseases in current UNHCR health policy.<sup>544</sup> In addition, UNHCR has sought to highlight issues of age-based violence, which is both a criminal and a health issue.<sup>545</sup> It has

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<sup>537</sup>Id. at 6.

<sup>538</sup>Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards*, 9 (Jan. 2009). <http://www.globalaging.org/elderrights/world/2008/internationallaw.pdf>.

<sup>539</sup>UNHCR *Global Report 2007 Global Programme*, 2 <http://www.unhcr.org/484923b52.pdf>. (last visited Oct. 23, 2014).

<sup>540</sup>UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, First Regional Conference on Internal Displacement in West Africa (Abuja - 26–28 April 2006)*, A/HRC/4/38/Add.4, (Feb. 20 2007) available at <http://www.refworld.org/docid/461f8e2c2.html>.

<sup>541</sup>*Report of the Special Rapporteur on Adequate Housing, Government Communications* A/HRC/10/7/Add.1 at no. 72, (Feb. 17 2009) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.7.Add.1.EFS.pdf>.

<sup>542</sup>UN Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène: addendum: mission to Latvia*, A/HRC/7/19/Add.3, no. 88 (Mar. 5 2008), available at <http://www.refworld.org/docid/47e11c0f2.html>.

<sup>543</sup>U.N. General Assembly, *Annual report of the Representative of the Secretary-General on the Situation of Human Rights on Internally Displaced Persons, Mission to Azerbaijan: at F*, A/HRC/24/13, at no. 70. (July 5, 2013) available at [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-13\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-13_en.pdf).

<sup>544</sup>*Public Health Equity in Refugee and Other Displaced Persons Settings, Evaluation Report*, 14 (Apr. 2010) available at <http://www.unhcr.org/4bdfe1699.pdf>.

<sup>545</sup>UNHCR *Global Report 2008, Liberia 2*, available at <http://www.unhcr.org/4a2d29632.pdf>. (last visited Oct. 23, 2014). UN High Commissioner for Refugees (UNHCR), *UNHCR Global Report 2008, Liberia*, (June 2009) available at <http://www.refworld.org/docid/4bd800a40.html>.

created self-reliance and income generation projects for West African refugees considering age,<sup>546</sup> and has created age-sensitive support for local integration.<sup>547</sup> It reported in 2006 that it was monitoring new refugee laws to see that they are in line with international protection standards and take into account gender and age-specific needs.<sup>548</sup> UNHCR also requires consideration for the needs of older persons who are returning refugees in order to ensure that they receive adequate protection, assistance and care throughout the repatriation and initial reintegration process.<sup>549</sup>

Furthermore, UNHCR has an Age, Gender and Diversity Mainstreaming Project, which is applied in every stage of relief to seek to ensure the particular protection needs of older refugees.<sup>550</sup> It was developed based on an evaluation of pilot project countries<sup>551</sup> to ensure that international standards of protection for older refugees are met.<sup>552</sup> Workshops<sup>553</sup> have trained staff members in new protocols<sup>554</sup> and best practices, which include emergency preparedness, age-disaggregated data collection, and border monitoring methods.<sup>555</sup> Technical experts on aging and operational data management have been fielded.<sup>556</sup> Standards and Indicators Reports continue tracking the mainstreaming methodology.<sup>557</sup> These measures have not changed the reality that older people face in displacement. All of the projects discussed above were implemented before a 2012 HelpAge

<sup>546</sup>UNHCR Global Report 2007, West Africa, 3 available at <http://www.unhcr.org/4848ff602.pdf>, (last visited Oct. 23, 2014).

<sup>547</sup>Id. Report No. 104 (LVI) – 2005 – Local Integration.

<sup>548</sup>UNHCR Global Report 2006 Sub-regional Report for Southern South America, 1 available at <http://www.unhcr.org/4666d2570.pdf> (last visited Oct. 23, 2014).

<sup>549</sup>Id. at 332. Report No. 101 (LV) – 2004.

<sup>550</sup>UNHCR, *Aggregated Executive Committee Reports includes Mentions of Older Persons of Concern*, 331 available at <http://www.unhcr.org/3d4ab3ff2.pdf> (last visited Oct. 23, 2014). (Includes all conclusions through October of 2008.) Report No. 100 (LV) – 2004.

<sup>551</sup>UNHCR, *Global Report 2005 Global Programme - Section on Older Refugees*, 86 available at <http://www.unhcr.org/449267660.pdf> (last visited Oct. 23, 2014).

<sup>552</sup>UNHCR Global Report 2007 Asia Summary, 3 available at <http://www.unhcr.org/48480d782.pdf>; UNHCR Global Report 2008, North America and the Caribbean, 5 <http://www.unhcr.org/4a2d32ca2.pdf>. (last visited Oct. 23, 2014).

<sup>553</sup>Id. at 5.

<sup>554</sup>UNHCR Global Report 2007 Asia, 3 available at <http://www.unhcr.org/48480d782.pdf> (last visited Oct. 23, 2014).

<sup>555</sup>*Border Monitoring Methodologies*, Peace Instit. Report (Nov. 2006) available at <http://www.unhcr.org/4aa0d9839.pdf> (last visited Oct. 23, 2014).

<sup>556</sup>UNHCR Global Report 2008, Internally Displaced Persons, 4 available at <http://www.unhcr.org/4a2d199b2.pdf>. (last visited Oct. 23, 2014).

<sup>557</sup>UNHCR Global Report 2007 Global Programme, 7 available at <http://www.unhcr.org/484923b52.pdf> (last visited Oct. 23, 2014).

International study finding that older persons received less than 1 % of humanitarian aid in 2010 and 2011.<sup>558</sup>

In its Policy on Older Refugees, 2000, UNHCR states that “older refugees will always have special needs,”<sup>559</sup> and affirmed that “the policy on older refugees has been formulated with the hope that future efforts on behalf of older persons will have become so well integrated into all aspects of protection and program planning and implementation.”<sup>560</sup> The Policy also indicated that “the components of a policy aimed at older refugees shall be pre-requisites for ensuring their participation and well-being.”<sup>561</sup> The Report further affirms the importance of age in ensuring the participation of refugees and other persons in the planning and implementation of programs and affirms the importance of giving a priority to addressing discrimination.<sup>562</sup>

The Report also called upon the governments concerned to focus attention and efforts on upholding protection to ensure proper consideration of the specific needs of older persons.<sup>563</sup> Additionally, the Report called for emphasis on the age and gender sensitive approaches and “support to boost the integration capacity of various groups with special needs”,<sup>564</sup> including older refugees, and it also encouraged UNHCR “to develop and apply appropriate standards and indicators that account for age and gender considerations in local integration and self-reliance programs.”<sup>565</sup>

The Report of the Secretary-General on human rights and mass exoduses notes that displaced persons are a category of most vulnerable persons partly because “the protection of uprooted persons is often problematic. As mass exoduses normally occur in situations of crisis and conflict, national authorities are either unable or unwilling to discharge their responsibility to protect their populations, even at the most basic level.”<sup>566</sup> In addition to the mechanisms outlined above, and for the well-being of refugees, commitments to protection by governments have been monitored by the Special Rapporteur on the Human Rights of Internally Displaced

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<sup>558</sup>A *Study of Humanitarian Financing for Older People and People with Disabilities*, HelpAge International, (2010–2011) available at <http://www.helpage.org/what-we-do/emergencies/a-study-of-humanitarian-financing-for-older-people-and-people-with-disabilities/> (last visited Feb. 19 2015).

<sup>559</sup>UN High Commissioner for Refugees (UNHCR), *UNHCR’s Policy on Older Refugees*, EC/50/SC/CRP.13, Annex II, (April 19 2000), available at <http://www.refworld.org/docid/47036b502.html>.

<sup>560</sup>*Id.*

<sup>561</sup>*Id.*

<sup>562</sup>*Id.* at para. 15.

<sup>563</sup>*Id.* at para. 43.

<sup>564</sup>*Id.* at para. 16.

<sup>565</sup>*Id.* at para. 16.

<sup>566</sup>UN General Assembly, *Human rights and mass exoduses, Report of the Secretary-General*, A/60/325, 17, (Sep. 1 2005) available at <http://www.refworld.org/docid/43f30fb70.html>.

Persons and the former Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (“RSG IDP”). For example, the RSG IDP had been engaging in coordinated advocacy in favor of the protection and respect of the human rights of IDP’s, and as it was reiterated in a report of the Secretary General, other areas of activity included dialogue with all sectors of society, strengthening the response to internal displacement, and mainstreaming the human rights of displaced populations in the UN system.<sup>567</sup>

In the Note by the Secretary-General transmitting the report of the RSG IDP, the Secretary-General highlighted the urgent needs of most the vulnerable groups among IDP’s, including older persons. The representative indicated that national and local authorities, as well as international agencies and donors, must seek sustainable solutions for these persons, adopting policies regarding social housing, foster families or homes.<sup>568</sup>

The RSG IDP has addressed the vulnerability of older persons displaced by armed conflict on a number of occasions, including situations in Croatia, Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo, in the 1990s.<sup>569</sup>

Similarly, in Serbia the RSG IDP noted that “thousands of IDPs continue to live in very difficult conditions in collective centers and irregular settlements,” older persons being among them.<sup>570</sup> The RSG IDP urgently recommended “social housing, foster families or [in] homes respecting their right to human dignity.”<sup>571</sup>

In Bosnia and Herzegovina, the RSG IDP expressed his concern about the deplorable living conditions of IDP’s.<sup>572</sup> The report goes on to note that multiple discriminations along ethnic, gender, age, class and other lines result in an accumulation of rights deprivation. The RSG IDP recommended to the authorities that they mainstream the protection needs of vulnerable groups when formulating all

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<sup>567</sup>U.N. Secretary General, *Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, A/60/338, (Sep. 7 2005) available at <http://www2.ohchr.org/english/issues/idp/mandate.htm> (The mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons, created by resolution of the Human Rights Council in 2010, has a similar mandate to that of its predecessor, the RSG IDP: see [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/14/6](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/14/6)).

<sup>568</sup>Id. at para. 10.

<sup>569</sup>U.N. Secretary General, *Specific Groups and Individuals: Mass Exodus and Displaced Persons, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kalin, U.N. Econ. And Soc. Council, E/CN.4/2006/71/Add.5 61, 62, 63 (Jan. 9 2006) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/101/33/PDF/G0610133.pdf?OpenElement>.

<sup>570</sup>UN Commission on Human Rights, *Report on the Human Rights of Internally Displaced Persons, Addendum: Mission to Serbia And Montenegro*, E/CN.4/2006/71/Add.5, (Jan. 9 2006) available at <http://www.refworld.org/docid/441181fcc1.html>.

<sup>571</sup>RSG IDPs, 2006, at para. 70.

<sup>572</sup>UN Commission on Human Rights, *Report on the Human Rights of Internally Displaced Persons, Addendum, Mission to Bosnia and Herzegovina*, E/CN.4/2006/71/Add.4, (Dec. 29 2005) available at <http://www.refworld.org/docid/441181f50.html>.

policies and measures affecting them and devise specific measures to find durable solutions.<sup>573</sup>

In Croatia, the RSG IDP recommended that the government should ensure that IDP's living in collective centers are "provided realistic alternatives concerning their future status, with an identification of their particular needs."<sup>574</sup> The RSG IDP further recommended that the "government should ensure that public specialized facilities, such as social housing," be made available to older IDP's.<sup>575</sup>

In Georgia in 2006, the RSG IDP urged the government "to seek durable solutions targeting particularly vulnerable persons among IDP's, including the creation of adequate housing and appropriate institutional arrangements."<sup>576</sup> Those belonging to particularly vulnerable groups, including older persons without family support, were not being transitioned out of temporary shelters.<sup>577</sup> The RSG IDP also recommended to "design and adopt a comprehensive, rights-based policy which would support IDP's as they integrate into society and acquire adequate living conditions, while maintaining their option to return" and that "such a policy should seek to ensure the full enjoyment of all human rights of IDP's, as restated in the Guiding Principles on Internal Displacement."<sup>578</sup>

The RSG IDP has turned attention to other regions of the world such as Latin America, Africa, and Central Asia. In Colombia, the RSG IDP recommended the adoption of special measures for the health and assistance needs of older persons, in particular those who have to take care of children left with them by their parents.<sup>579</sup> In Sudan, the RSG IDP found that "returnees arriving at their destinations often remained without shelter, sufficient food, clean drinking water or access to medical services."<sup>580</sup> In this situation, it concluded that older persons remained particularly vulnerable.<sup>581</sup>

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<sup>573</sup>Id. at para. 56.

<sup>574</sup>UN Commission on Human Rights, *Report on the human rights of internally displaced persons, Walter Kälin, Mission to Croatia*, E/CN.4/2006/71/Add.3, 48 (Dec. 29 2005) available at <http://www.refworld.org/docid/441181f30.html>.

<sup>575</sup>Id. at para. 48.

<sup>576</sup>Id. at para. 55.

<sup>577</sup>Id. at para. 54.

<sup>578</sup>Id. at para. 57.

<sup>579</sup>UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, A/HRC/4/38/Add.3, (RSG IDPs, 2007) 83 (Jan. 24 2007) available at <http://www.refworld.org/docid/461e3f5a2.html>.

<sup>580</sup>UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin. Addendum MISSION TO THE SUDAN\*\* (3–13 October 2005)*, E/CN.4/2006/71/Add.6, (RSG IDPs, 2006) 74 (Feb. 13 2006) available at <http://www.refworld.org/docid/441182140.html>. (last visited Oct. 23, 2014).

<sup>581</sup>Id. at para. 74.



In Azerbaijan, the RSG IDP noted with concern that the special needs of internally displaced older persons were insufficiently addressed, in particular as they seemed to be at an economic disadvantage compared to their non-displaced peers, due to difficulties in adjusting and diminished family support due to the impoverishment of their children.<sup>582</sup> The RSG IDP concluded that specific surveys and needs assessments into the situation of older internally displaced persons and their access to counseling and appropriate medical care needed to be conducted, and noted that both general and specific government programs should pay special attention to particularly vulnerable groups among internally displaced persons,<sup>583</sup> recommending a differentiated approach for older persons.<sup>584</sup>

Much has been learned since the CESCR expressed its concern to Japan in 2001 that “many resettled earthquake victims, who were over 60 years of age lack community centers, access to health centers and outpatient nursing.”<sup>585</sup> The 2009 Final Report of the Third Committee also called upon member states to adopt measures necessary to assist older persons in emergency situations.<sup>586</sup> Additionally, the related draft resolution further called upon member states to take concrete measures to further protect and assist older persons in emergencies, in accordance with MIPAA.<sup>587</sup>

## 2. The Rights of Older Women

Older women are often stigmatized because of their gender and age. The majority of older persons are women because of their longer life expectancy. In the more developed regions, the projected difference in life expectancy is even more

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<sup>582</sup>UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin: addendum: mission to Azerbaijan, A/HRC/8/6/Add.2, (RSG IDPs, 2008) 72 (Apr. 15 2008) available at <http://www.refworld.org/docid/48be9acb2.html> (last visited Oct. 23, 2014).

<sup>583</sup>Id. at para. 71.

<sup>584</sup>UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, A/HRC/4/38/Add.3, (RSG IDPs, 2007) 78 (Jan. 24 2007) available at <http://www.refworld.org/docid/461e3f5a2.html> (last visited Oct. 23, 2014).

<sup>585</sup>*Report on the Twenty-Fifth, Twenty-Sixth, and Twenty-Seventh Sessions*, CESCR E/2002/22, E/C.12/2001/17 available at [http://www.bayefsky.com/general/e\\_2002\\_22\\_2002.php](http://www.bayefsky.com/general/e_2002_22_2002.php) (last visited Oct. 23, 2014).

<sup>586</sup>General Assembly, U.N. Doc A/64/432, 15, available at <http://www.copac.coop/iyc/a-64-432-excerpt.pdf> (last visited Oct. 23, 2014).

<sup>587</sup>U.N. General Assembly, *Follow-up to the Second World Assembly on Ageing*, A/C.3/64/L.6, (Oct. 7 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/37/PDF/N0954737.pdf?OpenElement>.

dramatic.<sup>588</sup> Older women face abuse and mistreatment, age-related discrimination, do not access inheritance and suffer economic exploitation.<sup>589</sup> Older women are disproportionately disadvantaged: despite making up an ever-greater proportion of the population, they are often poorer than older men. This is a result of gendered discrimination patterns throughout their lives.<sup>590</sup> On average, older women accumulate less wealth than men. It is more difficult for them to find work and they are paid less than older men. By the time women have reached old age, many have experienced multiple disadvantages resulting from biases to gender, widowhood, and old age, among others. Such situations lead many older women into poverty.<sup>591</sup> Further examination of multiple discriminations across the life course has been encouraged by the Report of the independent expert on the question of human rights and extreme poverty, in her March 2010 report on social security.<sup>592</sup> This Report, highlighted that

[t]he majority of older women are excluded from formal social security and health insurance schemes as these are linked to paid, formal-sector employment. In developing countries, the great majority of women work all their lives in the informal sector or unpaid activities. In developed countries too, older women are more likely than men to be poor at old age.<sup>593</sup>

The ICCPR recognizes in its Article 3 that all civil and political rights set forth in the covenant are to be enjoyed equally by men and women. Additionally, the state parties to the ICCPR.<sup>594</sup> Also, the CRPD contains special provisions for women, in particular Article 6 which provides that “state parties recognize that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.”

To ensure respect for the right to social security, the CESCR suggested that states should refrain from discriminating against women who choose to stay at home to raise a family. For example, states should acknowledge time spent at home as a homemaker as work experience when evaluating women for employment opportunities. Such decisions will assist in the amelioration of poverty among older women. To ensure this right, particularly in connection with Article 9

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<sup>588</sup>Chung Working Paper 2010, para. 21.

<sup>589</sup>G.A. Res. 65/182, (Aug. 1–4 2011) available at [http://social.un.org/ageing-working-group/documents/Chair\\_summary\\_2nd\\_session\\_OEWG\\_final.pdf](http://social.un.org/ageing-working-group/documents/Chair_summary_2nd_session_OEWG_final.pdf).

<sup>590</sup>*Follow-Up to the Second World Assembly on Ageing: Report of the Secretary-General, Submitted to the United Nations General Assembly*, A/64/127, 49 (July 2009) available at <http://www.un.org/esa/socdev/documents/reports/Ageing.pdf>.

<sup>591</sup>Chung Working Paper 2010 para. 16.

<sup>592</sup>UN Human Rights Council, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*, A/HRC/14/31, (Mar. 31 2010) available at <http://www.refworld.org/docid/4c061e242.html>.

<sup>593</sup>Sepulveda Report, 2010 at para. 20.

<sup>594</sup>ICCPR at Article 3.

of the ICESCR, the CESCR considered that states should provide “non-contributory old-age benefits or other assistance for all persons.”<sup>595</sup> This benefit would be given, regardless of sex, to those without adequate resources upon reaching a prescribed age specified in national legislation.<sup>596</sup> To fulfill this right, the CESCR indicated that states should promote the need for more men to stay at home to raise families.

The CESCR expressed its concern about women who, having stayed at home to raise a family, have made no contributions to a social security plan, and therefore do not have any source of income in their later years.<sup>597</sup> Unfortunately, many of these same women are also ineligible for widows’ pensions.<sup>598</sup> Also, special measures of protection are expressly recognized in CEDAW Article 4.

CEDAW recognizes civil, political, social, economic, and cultural rights by requiring states “to take all appropriate measures, including legislation, to ensure the full development and advancement of women.”<sup>599</sup> According to Article 3 women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms. These include rights embodied in other treaties such as the ICCPR like the right to equality (article 2), the right to life (article 6); the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment (article 7); the right to liberty and security of person (article 9), the right to equal protection under the law (article 26); and the right to be free from all forms of discrimination (article 26). Also, according to the ICESCR, women have the right to just and favorable conditions of work (article 7) and the right to the highest standard attainable of physical and mental health (article 12).

The CEDAW elaborates on the term “discrimination against women” as any exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>600</sup>

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, indicated in his study on the realization of the right to health of older persons that “differences between the

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<sup>595</sup>*The Economic, Social, and Cultural Rights of Older Persons (Thirteenth Session, 1995)* Comm. on Econ. Soc. and Cultural Rights, U.N. Doc. E/1996/22, 21. (1996) <http://www1.umn.edu/humanrts/gencomm/epcomm6.htm> (last visited Oct. 23, 2014).

<sup>596</sup>*See Id.* at para. 21 (stating that women should be the principal beneficiaries because they have a greater life expectancy and often do not have contributory pensions).

<sup>597</sup>*See General Comment 6*, para. 20 (stating that men and women should enjoy equal economic, social, and cultural rights).

<sup>598</sup>*See Id.* (emphasizing the critical situation of women who stay at home).

<sup>599</sup>CEDAW, Article 3.

<sup>600</sup>CEDAW, Article 1.

genders in respect of the aging process must also be acknowledged, given that global life expectancy at birth for women is currently 70 years, and is significantly higher than for men at 66 years,” and that “older women are frequently excluded from social security and health insurance schemes that are linked to formal, paid employment.”<sup>601</sup>

With regard to older women, Article 11 of the CEDAW guarantees “the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.” As for other financial assistance, Article 13 of the CEDAW covers economic and social benefits, including the right family benefits, bank loans, mortgages, and other forms of financial credit. The CEDAW also acknowledges an especially vulnerable position of rural women asking state parties to take particular measures to ensure the application of the provisions, including their participation in the development planning, access to adequate health care facilities and equal access to economic opportunities through employment and enjoy adequate living conditions. As for marriage and family life, the CEDAW also emphasizes the obligation of the state parties to “eliminate discrimination against women in all matters relating to marriage and family relations.”<sup>602</sup> Article 5 of the CEDAW requires states to take measures against pernicious cultural practices that discriminate against women.

In CEDAW General Recommendation No 24 on health, the CEDAW Committee stated that “there are societal factors, which are determinative of the health status of women and men, and for that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups,” such as, inter alia, “older women.”<sup>603</sup>

Human rights experts addressing the CEDAW Committee regarding its General Recommendation No. 25, have indicated that, it “recognizes that discrimination against women can be compounded by other types of exclusion including age, and allows states to take temporary special measures to overcome the entrenched

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<sup>601</sup>Human Rights Council, *Thematic Study on the Realization of the Right to Health of Older Persons by the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Anand Grover, A/HRC/18/3717 (July 4 2011), [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37_en.pdf) (as indicated by Chung, older women suffer disproportionately from depression, are more likely to become depressed, and are less likely to recover from depression (Chung Working Paper, 2010, para. 25).

<sup>602</sup>CEDAW at Article 16.

<sup>603</sup>(*Twentieth session, 1999*): Article 2: *Women and Health*, ICESCR, A/54/38/Rev.1 part I 3 at 6 (1999) available at [http://www.bayefsky.com/themes/disability\\_general-comments.pdf](http://www.bayefsky.com/themes/disability_general-comments.pdf) (last visited Oct. 23, 2014); UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, A/54/38/Rev.1, chap. I, (1999) available at <http://www.refworld.org/docid/453882a73.html>. (last visited Oct. 23, 2014).

nature of discrimination such women face.”<sup>604</sup> It noted that certain groups of women might also suffer from multiple forms of discrimination based on additional grounds such as, inter alia, age. The recommendation stated that “such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. State parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”<sup>605</sup>

In recent years, there has been growing pressure on the CEDAW Committee to pay closer attention to the rights of older women. Consequently, in 2010, the CEDAW Committee adopted the landmark General Recommendation No. 27 on the rights of older women and protection of their human rights,<sup>606</sup> The General Recommendation explores the relationship between the rights protected by CEDAW and aging.<sup>607</sup> It also acknowledges the multiple forms of discrimination that women face across their lives, outlines the scope of the state obligations under CEDAW with respect to the protection of older women and includes policy recommendations.<sup>608</sup> Ultimately, the General Recommendation provides guidance to states in the including of the situation of older women in their periodic reports to the Committee.<sup>609</sup> However, this guidance has not yet resulted in the routine inclusion of the situation of older women in reports.

Cultural practices of early marriage for women, in addition to their longer life expectancy, creates a situation in which women are more likely to be widowed than men, which in turn puts older women at higher risk of poverty. The CESCR expressed concern about the problem of the abandonment of older women and strongly recommended that the state party “undertake effective public education measures, including awareness-raising programs designed to eliminate gender-based prejudices and traditional practices that are harmful to women.”<sup>610</sup> Land and inheritance rights in many countries deny women their right to own and keep

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<sup>604</sup>Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* pg. 9 (Jan. 2009) available at <http://www.globalaging.org/elderrights/world/2008/internationallaw.pdf>.

<sup>605</sup>*Report of the Committee on the Elimination of Discrimination against Women: Thirtieth session, UN Comm. on the Elimination of Discrimination Against Women (CEDAW), (12–30 January 2004), Thirty-first session (6–23 July 2004), Thirtieth session, (2004): Article 4, Paragraph 1: Temporary Special Measures, A/59/38 part I 78 at 12. (2004) available at <http://www.refworld.org/docid/4ef9ec682.html>. (last visited Oct. 23, 2014).*

<sup>606</sup>*General Recommendation No. 27 on older women and protection of their human rights, CEDAW CEDAW/C/GC/27 (Dec. 16 2010). available at <http://www.refworld.org/docid/4ed3528b2.html>.*

<sup>607</sup>*Id.* at para. 9.

<sup>608</sup>*Id.*

<sup>609</sup>*Id.* at para. 10.

<sup>610</sup>China, ICESCR, E/2006/22 25 at 148 and 178 (2005) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/422/64/PDF/G0642264.pdf?OpenElement> (last visited Oct. 23, 2014).

property.<sup>611</sup> The CEDAW Committee has also denounced this problem and documented that widows in some countries are victims of “property grabbing,” as a result of the application of domestic statutory or customary laws.<sup>612</sup> Witchcraft allegations and violence against older women are usually linked to disputes over property ownership and inheritance.<sup>613</sup> This can lead to impoverishment, abuse, violence and even murder.<sup>614</sup> The CEDAW Committee has expressed “serious concern about the number of older women who have been murdered for superstitious reasons by family members or by others in Zambia in recent years.” The ongoing violence of the accusers occurs without recognition “that such violence constitutes a violation of the human rights of women under the Convention” in Zambia.<sup>615</sup>

Social pensions are also an important mechanism to confront the specific vulnerabilities of women but can also perpetuate inequalities affecting older women. In many countries, contributory social protection systems’ coverage rates for older men are twice those for their female counterparts, therefore magnifying already existing gender inequalities.<sup>616</sup> Human rights experts consider that universal pensions can contribute to eliminate differences of treatment towards women. It can help older women with income, as well as women who provide unpaid services as caregivers. Evidently, there are structural changes that have to be addressed like lack of documentation of most women and attitudinal barriers in social services.<sup>617</sup> Likewise, in order to compensate women who have worked for many years without payment, non-contributory pensions can be implemented. These measures can be combined with other policies or programs such as social services, provision of land, and other resources.<sup>618</sup>

Women are often deprived of their status, property, and legal rights and excluded economically and socially. CEDAW explicitly condemns “discrimination” against women and calls on states to adopt measures that will eliminate such discrimination. It also considers the vulnerability of rural women due to their lack of access to health care and calls on states to implement measures that will allow

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<sup>611</sup>See *HelpAge International, Ageing and Development*, Issue 26, (Sep. 2009) available at <http://www.helpage.org/what-we-do/rights/ageing-and-development-26-older-peoples-rights/>; HelpAge International, Final Evaluation Report of the Older Women Inheritance Rights Project, (May 2008) (In Tanzania, for example, 77 percent of the cases on disputes over inheritance and land rights were brought by older women).

<sup>612</sup>Committee, General Recommendation No. 27 on older women and protection of their human rights, *supra* note 558, para. 26.

<sup>613</sup>Chung Working Paper, 2010, para. 13.

<sup>614</sup>Chung Working Paper 2010 para. 11; Sepulveda Report, 2010 para 96.

<sup>615</sup>Zambia, CEDAW, A/57/38 part II 111 at 238 and 239 (2002) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/614/17/PDF/N0261417.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>616</sup>Sepulveda Report at para. 33.

<sup>617</sup>Sepulveda Report, 2010, at para. 95.

<sup>618</sup>Conclusions and Recommendations, Sepulveda Report 2010 at para. 115.

rural women to access health and social services and participate in the political and social process. General Comment No 25 recognizes discrimination compounded by age. General Comment No. 24 addresses the need to acknowledge the disproportionate amount of women that suffer from diseases associated with aging, due to their increased life expectancies.<sup>619</sup> General Recommendation 27 expands its analysis on the rights of older women and acknowledges the limited protection this group has received regarding the protection of their fundamental rights.<sup>620</sup>

The General Assembly Third Committee passed the resolution on implementation of the situation of women in rural areas in October, 2009, which included a provision to “ensure that the rights of older women in rural areas are taken into account with regard to their equal access to basic social services, appropriate social protection and social security measures, equal access to and control of economic resources, and empowerment of older women through access to financial and infrastructure services, with special focus on support to older women, including indigenous women, who often have access to few resources and are more vulnerable.”<sup>621</sup> While the resolution is not legally binding, it is an important reflection of the norm of equal recognition and protection of older women, which could, arguably, be considered international customary law.

A Report of the Commission on the Status of Women asked the states “to develop multi-sector policies and programs and identify, strengthen and take all necessary measures to address the needs of women and girls, including older women and widows”. The Commission on the Status of Women highlighted that “social and legal protection, increased access to financial and economic resources including microcredit and sustainable economic opportunities, education including opportunities to continue education, as well as access to health services, including affordable antiretroviral treatment, and nutritional support”, as priority areas.<sup>622</sup> Further, the Report urged “governments and other relevant stakeholders to address the challenges faced by older women in accessing HIV prevention, treatment, care, and support.”<sup>623</sup>

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<sup>619</sup>Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards* pg. 4 (Jan. 2009) available at <http://www.globalaging.org/elderrights/world/2008/internationallaw.pdf>.

<sup>620</sup>Committee, General Recommendation No. 27 on older women and protection of their human rights *supra* note 558.

<sup>621</sup>United Nations General Assembly, *Improvement of the Situation of Women in Rural Areas*, A/C.3/64/L.19 (Oct. 14 2009) available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/559/46/PDF/N0955946.pdf?OpenElement>.

<sup>622</sup>*Commission on the Status of Women Fifty-third session*, U.N. Econ. and Soc. Council E/2009/27 (Mar. 2–13 2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/283/98/PDF/N0928398.pdf?OpenElement>; *Mainstreaming a Gender Perspective into All Policies and Programmes in the United Nations System*, U.N. Econ. and Soc. Council, E/2009/71 (May 12 2009) available at <http://www.un.org/womenwatch/daw/documents/ecosoc2009.htm>.

<sup>623</sup>*Id.* at para. 7.



The 2009 Final Report of the Third Committee called upon member states “to strengthen the gender perspective into all policy actions on aging,” as well as to “eliminate and address discrimination based on age and gender.” It further suggested that member states “engage with all sectors of society, including women’s groups”... in changing negative stereotypes about ... older women in particular.”<sup>624</sup> The Draft Resolution encouraged “governments to pay greater attention to building capacity to eradicate poverty among older women in particular, by mainstreaming aging issues into poverty eradication strategies and national development plans, and to include both aging-specific policies and age in mainstreaming efforts in their national strategies.”<sup>625</sup> These recommendations, while not legally binding, are useful components of growing international recognition of the need to protect the human rights of older persons.

The Report of the Secretary General on the follow-up to the Second World Assembly on Ageing highlighted “special attention to the needs and concerns of older women in the review and appraisal of implementation of the Beijing Declaration and Platform for Action. It urged the consideration of the situation of older women in the context of the analysis of critical areas such as women and poverty, women and the economy, and women and health.”<sup>626</sup>

The United Nations Declaration on the Elimination of Violence against Women<sup>627</sup> notes older women are one of the groups especially vulnerable to violence. The instrument defines the “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life”<sup>628</sup> In one instance, the CEDAW Committee commended a state party on the adoption of a law on domestic violence with protective measures for older persons but expressed the concern that the penalty is merely a fine.<sup>629</sup>

In the follow-up to and Progress in the Implementation of the Beijing Declaration and Platform for Action, the 23rd Special Session of the General Assembly addressed the situation of older women in society, indicating that the

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<sup>624</sup>G.A. Res. A/64/432 12, available at <http://www.copac.coop/iyc/a-64-432-excerpt.pdf>. (last visited Oct. 23, 2014).

<sup>625</sup>U.N. General Assembly, *Follow-up to the Second World Assembly on Ageing*, A/C.3/64/L.6 (Oct. 7 2009) available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N09/547/37/PDF/N0954737.pdf?OpenElement>.

<sup>626</sup>U.N. General Assembly, *Report of the Secretary General on the Follow Up to the Second World Assembly on Ageing*, A/60/151 (July 22, 2005), para. 28, available at <http://www.un.org/ga/60/third/docslist.htm>.

<sup>627</sup>U.N. General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104 (Dec. 20 1993) available at <http://www.un.org/documents/ga/res/48/a48r104.htm>.

<sup>628</sup>*Id.*

<sup>629</sup>Paraguay, Suppl. No. 38, A/60/38(Supp), 32<sup>nd</sup> and 33<sup>rd</sup> Sess., 279 available at (<http://www.un.org/ga/60/third/docslist.htm>) (last visited Oct. 23, 2014).

Political Declaration and MIPAA, “provided a broad spectrum of social, political and economic recommendations to improve the conditions of older women.” It also mentioned “that the situation of older women must be a priority for policy action” and it also call upon states “to ensure that the needs, perspectives and experiences of older women are reflected in all development policies and programs.”<sup>630</sup>

In the Report of the Secretary-General on the review of the implementation of the Beijing Declaration and Platform for Action, in 2010, it was noted that efforts have also been made to expand women’s access to health information, as well as gender-sensitive health information to expand awareness about the availability of health services, with respect to, inter alia, healthy aging.<sup>631</sup> It mentioned the poverty of older women, and that the problem has been magnified by the fact that older women often assume responsibility for children orphaned by AIDS.<sup>632</sup> The Report also emphasized illiteracy which remains a key issue for women. It is particularly prevalent among women who are older, poor, disabled, from ethnic minorities, or from rural areas.<sup>633</sup> Finally, the Report identified as priority areas: research on barriers to women’s access to decision-making, and the specific needs and priorities of vulnerable groups of women, including, inter alia, older women in relation to many of the critical areas of concern, especially in the area of health.<sup>634</sup>

In a unique connection, the Asia-Pacific High-level Intergovernmental Meeting to Review Regional Implementation of the Beijing Platform for Action at Fifteen Years concluded that “while women are largely responsible for natural resource management in the household, they have been excluded from developing, planning, and implementing environmental policies although they are, together with their children and older persons, among the most vulnerable to the consequences of climate change.”<sup>635</sup> Likewise, in General Recommendation No. 27, the

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<sup>630</sup>U.N. General Assembly, *Follow-up to and Progress in the Implementation of the Beijing Declaration and Platform for Action and the Outcome of the 23rd Special Session* A/58/166, 38, <http://www.un.org/esa/documents/ac3.htm>, (referring to resolution 57/177).

<sup>631</sup>U.N. Secretary General, *Review of the implementation of the Beijing Declaration and Platform for Action, the Outcomes of the Twenty-Third Special Session of the General Assembly and its Contribution to Shaping a Gender Perspective Towards the Full Realization of the Millennium Development Goals*, E/CN.6/2010/2 94 (Feb. 8 2010) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/637/20/PDF/N0963720.pdf?OpenElement>.

<sup>632</sup>Id. at para. 27.

<sup>633</sup>Id. at para. 67.

<sup>634</sup>Id. at paras 496 and 519.

<sup>635</sup>*Outcome Document of the Asia Pacific High Level Intergovernmental Meeting to Review Regional Implementation of the Beijing Platform for Action at Fifteen Years, and its Regional and Global Outcomes*, E/ESCAP/BPA/2009/CRP.1 (Nov. 18 2009) available at [http://www.unescap.org/ESID/GAD/Events/HLM-2009/download/BPA09\\_CRP1E\\_edited\\_final.pdf](http://www.unescap.org/ESID/GAD/Events/HLM-2009/download/BPA09_CRP1E_edited_final.pdf) (similarly in the Bangkok Declaration for Beijing, at para. 23).

CEDAW Committee concluded that older women have “limited access to resources and decision-making processes increase their vulnerability to climate change.”<sup>636</sup> In its early days, much of the CEDAW Committee’s attention to older women centered around older women’s health and benefits programs.<sup>637</sup> Addressing decision-making processes of older women and their vulnerability to climate change highlights the CEDAW Committee’s evolving understanding of the intersecting spheres of women’s lives.

While still maintaining its observance of the situation of poverty many older women face,<sup>638</sup> it has more recently taken a broader approach to the rights of older women. It has started highlighting reports that lack attention to the rights of older

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<sup>636</sup>Committee, General Recommendation No. 27 on older women and protection of their human rights, *supra* note 558, para. 25. *General recommendation No. 27 on older women and protection of their human rights*, CEDAW, CEDAW/C/GC/27, (Dec. 16 2010) available at <http://www.refworld.org/docid/4ed3528b2.html>.

<sup>637</sup>See Iceland, CEDAW, A/57/38 part I (2002) 27 at 249 and 250. (expressing concern about the change of the pension system, which negatively impacted on women more than men); Sri Lanka, CEDAW, A/57/38 part I (2002) 31 at 296 and 297 (highlighting the high percentage of households headed by women, many of whom are elderly and should be recognized as equal recipients and beneficiaries of development programs); Switzerland, CEDAW, A/58/38 part I (2003) 20 at 102 (positively noting the law reform on old age and survivors’ insurance establishing a system of individual pensions independent of civil status, and requesting that Switzerland take into account the gender dimensions of the plan of action adopted by the Second World Assembly on Ageing in its next periodic report); Luxembourg, CEDAW, A/58/38 part I (2003) 47 at 295 (noting that pensions play a key role in preventing poverty among older women); Para. 15, A/56/38(SUPP) (CEDAW, 2001) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/534/56/PDF/N0153456.pdf?OpenElement> (last visited Oct. 23, 2014) (expressing concern that elderly women may be marginalized within, as well as insufficiently covered by, the health insurance and pension systems); Paras. 330 and 333, Italy A/60/38(SUPP) (CEDAW, 2005) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/476/97/PDF/N0547697.pdf?OpenElement>. (last visited Oct. 23, 2014). (requesting the provision of information on the health care of older women); France, CEDAW, A/58/38 part II (2003) 116 at 263 and 264 (recommending that France to research the needs of older women and develop measures that adequately address their health, economic and emotional situation in order to avoid poverty and isolation, as well as take women’s unpaid and paid employment patterns and family responsibilities when altering legal and policy measures in order to avoid discrimination of effect); Luxembourg CEDAW, A/58/38(SUPP) (2003) 295. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/468/20/PDF/N0346820.pdf?OpenElement> (commending Luxembourg for adopting new laws in support of the goal of gender equality, including the law on pensions as a key in preventing poverty among older people and particularly women).

<sup>638</sup>Ireland, CEDAW, A/60/38 part II (2005) 151 at 392 and 393.

women,<sup>639</sup> and requesting that state parties include more information on the implementation of aspects of the documents from the Second World Assembly on Ageing relating to relevant articles of the CEDAW in future periodic reports.<sup>640</sup>

According to the third working session of the UN Open-Ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons, “the reality of older persons has largely degraded, from elders being respected and serving in their communities as mediators, to experiencing increasing amount of violence and abuse today, especially older women.” It also referred to “several examples of abuse and violence, including gang rape, ...are increasingly reported in some regions of Africa.”<sup>641</sup>

Older rural women remain among the most impoverished and vulnerable in any population.<sup>642</sup> The CEDAW Committee has stated “its concern about the absence of detailed information on the situation of older women in rural areas” and urged

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<sup>639</sup>See U.N. General Assembly, *Report of the Committee on the Elimination of Discrimination Against Women*, A/55/38(SUPP), CEDAW, (2000) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/611/52/PDF/N0061152.pdf?OpenElement>. (last visited Oct. 23, 2014); Nicaragua; CEDAW Committee, A/HRC/WG.6/1/NLD/3, 11, 314, and 315 (Mar. 13 2008); UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - The Netherlands*, A/HRC/WG.6/1/NLD/3, (Mar. 13 2008), available at <http://www.refworld.org/docid/4857a6f30.html>; *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Indonesia*, UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW/C/IDN/CO/5, (Aug. 10 2007) available at <http://www.refworld.org/docid/46d281000.html> [accessed 31 January 2014]; Kenya, para. 45, CEDAW/C/KEN/CO/6 (CEDAW, 2007) *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Kenya*, UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW/C/KEN/CO/6, (Aug. 10 2007) available at <http://www.refworld.org/docid/46d280ff6.html>. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Madagascar*, CEDAW, CEDAW/C/MDG/CO/5, (Nov. 7 2008) available at <http://www.refworld.org/docid/494ba8cfd.html>.

*UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Kazakhstan*, CEDAW/C/KAZ/CO/2, (Feb. 2 200) available at <http://www.refworld.org/docid/45f6cddb2.html>.

<sup>640</sup>U.N. General Assembly, *Report of the Committee on the Elimination of Discrimination Against Women*, A/60/38(SUPP), CEDAW (2005), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/476/97/PDF/N0547697.pdf?OpenElement>. (last visited Oct. 23, 2014) (citing Pars Samoa, 68; Algeria, 165; Croatia, 207; Gabon, 253; Paraguay, 295; Turkey, 385; Lao People's Democratic Republic, 116).

<sup>641</sup>G.A. Res. 65/182 *Open-ended Working Group on Ageing* (Aug. 21–24 2012) available at <http://social.un.org/ageing-working-group/documents/Chairsummary3rdsessionOEWGfinal.pdf>. (last visited Oct. 23, 2014).

<sup>642</sup>*Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Portugal*, CEDAW, CEDAW/C/PRT/CO/7, (Apr. 1 2009) available at <http://www.refworld.org/docid/494ba8d12.html>. (last visited Oct. 23, 2014).

the states to “ensure that they benefit from policies and programs in all areas, in particular access to health, education, social services and decision-making.”<sup>643</sup>

Further, the CEDAW Committee has highlighted and recommended that states take measures to increase the literacy levels of older women.<sup>644</sup> It has also noted with concern disproportionate numbers of illiterate older women, highlighted a lack of information in the reports on older women, and requested more information on them.<sup>645</sup> The CEDAW Committee, for example, also expressed its concern about the extremely high rate of illiteracy among older women in Malawi and recommended that the state party make every effort to improve the literacy level.<sup>646</sup>

Also, the CEDAW Committee refers to systemic indirect discrimination against women in employment resulting in older women with lower incomes than older men.<sup>647</sup> The CEDAW Committee expressed particular concern about the unemployment situation of women older than 40 years,<sup>648</sup> encouraging labor legislation and use of temporary special measures.<sup>649</sup>

In 2012, the UNHCHR noted that “older women face obstacles to inheriting housing, land and property. In other regions, long-term older residents may be harassed by landowners or real estate agents to force them to evacuate their housing so that it can be redeveloped or sold at a higher price.”<sup>650</sup> In the follow-up to the Second World Assembly on Ageing Report of the Secretary-General it was pointed out that “the higher incidence of poverty among older seniors is explained by the fact that their pensionable income was lower than that of younger groups of workers”... “another important factor is the significantly higher proportion of women among older seniors”... “in 27 out of 30 OECD countries, older women are at greater risk of poverty than older men.”<sup>651</sup>

<sup>643</sup>Suriname, CEDAW, A/57/38 part II (2002) 82 at 37, 65 and 66. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/614/17/PDF/N0261417.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>644</sup>Id. at para. 314, Romania, CEDAW Committee.

<sup>645</sup>Portugal, CEDAW, A/57/38(SUPP), 339–347,(2002) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/614/17/PDF/N0261417.pdf?OpenElement>. (last visited Oct. 23, 2014).

<sup>646</sup>*UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Malawi*, CEDAW, CEDAW/C/MWI/CO/5, (Feb. 3 2006) available at <http://www.refworld.org/docid/453778440.html>.

<sup>647</sup>*UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Serbia*, CEDAW, CEDAW/C/SCG/CO/1, 31 (June 11 2007) available at <http://www.refworld.org/docid/468b55902.html>.

<sup>648</sup>Croatia, CEDAW, A/60/38(SUPP) 194 (2005) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/476/97/PDF/N0547697.pdf?OpenElement>.

<sup>649</sup>Croatia, CEDAW, A/60/38 part I 30 at 194 and 195 (2005) (encouraging temporary special measures in accordance with Article 4, paragraph 1, of the CEDAW).

<sup>650</sup>*Report of the United Nations High Commissioner for Human Rights*, E/20/251, 45, (Apr. 20 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>651</sup>U.N. Secretary General, *Follow-up to the Second World Assembly on Ageing*, A/67/188, 26, (July 26, 2012) available at [http://social.un.org/ageing-working-group/documents/A\\_67\\_188\\_E.pdf](http://social.un.org/ageing-working-group/documents/A_67_188_E.pdf).

In a report on Mozambique, the CEDAW Committee expressed concern over cultural beliefs about older women, and accusations of witchcraft against them, which are often correlated with land-grabs, and requested that the government challenge those views.<sup>652</sup> A separate Report of the Secretary-General on the improvement of the situation of women in rural areas concluded that “in many countries, customary laws and practices allow women to access land and enable them to engage in and benefit from agricultural, livestock and forest based production. However, when land becomes a marketable asset, women’s access rights to land may be violated or ignored by family and community members, particularly in the case of widowed and divorced women.”<sup>653</sup>

In its report on France, the CEDAW Committee expressed that it remains “concerned that specifically targeted measures to combat the marginalization of older immigrant and migrant women are missing.”<sup>654</sup> Furthermore, the Committee encourages the state party to develop a consistent overall policy in order to improve the situation of older women and to develop comprehensive programs and policies targeted specifically at the elimination of marginalization of older women.”<sup>655</sup>

### ***3. The Rights of Older Persons with Disabilities***

In 2012, the Report of the United Nations High Commissioner for Human Rights stated that “while aging cannot be equated to a disability in and of itself, old age can lead to disabilities.” Likewise, it mentioned that “the World Report on Disability 2011 confirms the relationship between old age and disability across all regions. Old age and disability are factors that, separated or combined, can make a person vulnerable to a range of human rights violations.”<sup>656</sup>

Persons with disabilities form a specific group that is equally varied and complex as older persons. Where the two groups overlap, there are special protections

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<sup>652</sup>See *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Mozambique*, CEDAW/C/MOZ/CO/2, 42 (June 11 2007) available at <http://www.refworld.org/docid/4688b4fc2.html>.

<sup>653</sup>*A Gender Perspective on Land Rights: Equal Footing*, Food and Agriculture Organization of the United Nations, A/60/165, 16 (2005) (<http://www.un.org/ga/60/third/docslist.htm>) (last visited Oct. 23, 2014).

<sup>654</sup>*Concluding comments of the Committee on the Elimination of Discrimination against Women: France*, CEDAW/C/FRA/CO/6, (Apr. 8 2008) available at <http://www.refworld.org/docid/4885cf98d.html>.

<sup>655</sup>*Id.* at para. 39.

<sup>656</sup>*Report of the United Nations High Commissioner for Human Rights*, U.N. Econ. and Soc. Council, E/2012/51, 58 (Apr. 20 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

in place for older persons with disabilities. The major treaty in this regard is the Covenant on the Rights of Persons with Disabilities (CRPD).<sup>657</sup> In particular, the principles of equality and non-discrimination are reaffirmed as the state parties pledge to prohibit all discrimination based on disability, and guarantee that persons with disabilities enjoy equal and effective legal protection against discrimination on all grounds. Additionally, article 5 provides that the state parties are to “take all appropriate steps to ensure that reasonable accommodation is provided” to the group.<sup>658</sup>

The CRPD establishes standards pertaining to accessibility to enable persons with disabilities of all ages to participate in society and live independently. States are required to take appropriate measures to ensure that persons with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications technologies and systems, as well as other facilities and services open or provided to the public.<sup>659</sup> The paradigm shift towards supported decision-making provided for by article 12 of the CRPD places autonomy and independence of the individual at the core of this notion.<sup>660</sup>

Likewise, article 12 outlines the states’ duty to provide “appropriate and effective safeguards” that include “measures relating to the exercise of legal capacity with respect to the rights, will and preferences of the person,... free of conflict of interest and undue influence, ... proportional and tailored to the person’s circumstances, and... subject to regular review by a competent, independent and impartial authority or judicial body.”<sup>661</sup> This is a great advantage for older persons with disabilities; it respects the important right to liberty, as discussed in previous sections of this chapter. The protection of legal capacity for a disabled older person to make decisions for him or herself is foundational to the exercise of all other rights.

Older persons with disabilities deserve specific attention as they are subject to hospitalization and institutionalization on the account of their age, their disability, or both factors.<sup>662</sup> Once admitted, the vast majority of older persons with disabilities spend the remaining part of their lives in institutions. Older persons with disabilities can often find themselves in a situation of powerlessness and vulnerability, in which they may be under the total control of another person.<sup>663</sup>

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<sup>657</sup>*Convention on the Rights of Persons with Disabilities*, <http://www.un.org/disabilities/default.asp?id=259>. (last visited Oct. 23, 2014).

<sup>658</sup>*Id.* at Article 5.

<sup>659</sup>*Id.* at Article 9.

<sup>660</sup>*Report of the United Nations High Commissioner for Human Rights*, U.N. Econ. and Soc. Council, E/2012/51, 21, (Apr. 20, 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/51](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/51).

<sup>661</sup>Art 12, CRPD.

<sup>662</sup>*Id.* at para. 28.

<sup>663</sup>*Id.* at para. 59.



The Madrid Plan of Action called the attention of the international community to the growing challenge of responding to the mental health needs of rapidly aging populations. Mental health problems are a leading cause of disability and reduced quality of life in older age. The timely and accurate diagnosis of such problems and their appropriate treatment can, inter alia, avoid unnecessary institutionalization. Strategies to cope with mental health diseases include medication, psychological support, cognitive training programs, training for caregiver family members, and care provider staff and specific models for in-patient care.<sup>664</sup> Also, these safeguards must be proportional to the effects that such measures have on the person's rights and interests.

As for the rights to property, the state parties have a duty to ensure persons with disabilities are not arbitrarily deprived of their property.<sup>665</sup> Older persons who have accumulated some form of relative wealth who experience disability of any kind are at a magnified risk for abuse in this regard.

The Draft Resolution I "Realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities" called for further action and "providing assistance to developing countries, in particular to least developed countries, with special attention to persons with disabilities in vulnerable circumstances."<sup>666</sup>

The UN Secretary General's Report on the review and appraisal of the World Programme of Action Concerning Disabled Persons has stated that institutions, services, and development activities must be focused on where persons live.<sup>667</sup> This is problematic for rural areas, where services for all are often scarce. Older persons often have disabilities, and since many live in rural areas due to the urbanization of middle-aged people, the successful promotion of sustainable livelihoods for persons with disabilities must involve their full and effective participation and increased access to social and economic opportunities.<sup>668</sup>

According to the follow-up to the World Summit for Social Development and the XXIV special session of the General Assembly, "policies and programmes targeting older persons with disabilities are reported in a number of developed

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<sup>664</sup>U.N. Secretary General, *Second Review and Appraisal of the Madrid International Plan of Action on Ageing*, E/CN.5/2012/5 78, (Nov. 3 2011) available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/579/60/PDF/N1157960.pdf?OpenElement>.

<sup>665</sup>Id. at Article 12.

<sup>666</sup>U.N. General Assembly, *Resolution Adopted by the General Assembly on 18 December 2008*, A/63/424 p. 23 (Feb. 11 2009) available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/63/151&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/151&Lang=E).

<sup>667</sup>U.N. Secretary- General, *Social Development, Including Questions Relating to the World Situation and to Youth, Ageing, Disable Persons, and the Family*, E/2003/5 P. 5, (2003) available at <http://www.un.org/disabilities/default.asp?id=40>.

<sup>668</sup>Id.

countries. Some of these initiatives come in the wake of the ratification of the Convention on the Rights of Persons with Disabilities. The Australian National Disability Agreement of 2009 includes provisions targeting older persons with disabilities, as did its 2007 revision of the Home and Community Care Act of 1985. Serbia also established a new project in 2009 to improve services at the local level, which includes provisions for older persons with disabilities.”<sup>669</sup>

#### ***4. The Rights of Older Migrant Workers***

The key human rights instrument for this group is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“Convention on Migrant Workers”), which sets out the scope of application of the instrument in Article 1 that shall cover all migrant workers and members of their families without distinction of any kind such, *inter alia*, age or “other status.”<sup>670</sup> As for the time limit of application, the Convention on Migrant Workers states in Article 1 that it “shall apply during the entire migration process,” including also the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.<sup>671</sup> The 2010 Report on human rights and extreme poverty emphasized that “Migrant workers can be at risk of losing income” and social security benefits in their old age,” because “persons who have migrated to work in their adulthood may have contributed to pension systems where they worked, when they retire and return to their countries of origin they may be unable to reap the benefits of their prior contributions.”<sup>672</sup>

In the Convention on Migrant Workers state parties undertake the obligation to ensure all the rights provided for in this instrument without distinction of any kind, including also age and ‘other status.’<sup>673</sup> Age is expressly prohibited as grounds for discrimination against migrant workers, which is a notable characteristic of this treaty if we consider that almost all of the key human rights instruments fail to identify age as a prohibited ground for discrimination.<sup>674</sup>

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<sup>669</sup>U.N. Secretary General, *Second Review and Appraisal of the Madrid International Plan of Action on Ageing* 83, (Nov. 3 2011) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/579/60/PDF/N1157960.pdf?OpenElement>.

<sup>670</sup>G.A. Res. 45/158, A/45/49 *International Convention on the Protection of Migrant Workers and their Families*, Article 7, (2009) available at <http://www1.umn.edu/humanrts/instree/n8icprmw.htm> (last visited Oct. 23, 2014).

<sup>671</sup>*Id.*

<sup>672</sup>Sepulveda Report, 2010. at para. 23.

<sup>673</sup>*Id.*

<sup>674</sup>UN SG Report on Aging, *supra* note 342, para. 17.

In the Human Rights Council's UPR process, the rights of older migrants in Malta were highlighted. There are concerns that particularly vulnerable persons, including older persons, poor treatment in detention and detention periods for those groups in some cases exceeded twelve months.<sup>675</sup> The report recommended that Malta explore alternative policies concerning the treatment of asylum seekers. Further, the Report positively noted that the reviewed state's key priorities include social welfare and the care for older persons.<sup>676</sup> Saudi Arabia's Working Group Report noted the state's efforts in eliminating discrimination against migrant workers and recommended to extend human rights equally to all migrant workers, regardless of their age and gender.<sup>677</sup> Additionally, it is worth noting that the HR Council's Special Rapporteur of human rights of migrants condemned placement of older persons in migration detention.<sup>678</sup>

## F. UN Specialized Agencies

There are a number of specialized international organizations within and affiliated to the United Nations. The International Labour Organization (ILO), the World Health Organization (WHO) and its regional organization, the Pan-American Health Organization (PAHO), and the World Bank all have produced relevant work and guidance relating to older persons' rights.

### 1. International Labour Organization

The ILO is the international organization responsible for drawing up and overseeing international labor standards. It brings together representatives of governments, employers, and workers to jointly shape policies and programs promoting decent work for all.<sup>679</sup> The ILO conventions most pertinent to the lives of older persons focus on anti-discrimination, training, full employment, and social

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<sup>675</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Malta*, A/HRC/12/7; A/HRC/WG.6/5/L.6, 44 (Jun. 4 2009) available at <http://www.refworld.org/docid/4a9cdb940.html>.

<sup>676</sup>*Id.* at para. 56.

<sup>677</sup>UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Saudi Arabia*, A/HRC/WG.6/4/L.9; A/HRC/11/23, 67 (Mar. 4 2009) available at: <http://www.refworld.org/docid/49f964f31a.html>.

<sup>678</sup>UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante: addendum: mission to the United States of America*, A/HRC/7/12/Add.2, no. 31 (Mar. 5 2008), available at <http://www.refworld.org/docid/47d647462.html>.

<sup>679</sup>*About the International Labor Organization*, Int'l Labor Org., <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>. (last visited Oct. 23, 2014).

security benefits. More recently, the ILO has broadened its scope to include issues of the prevention of gender discrimination,<sup>680</sup> and the creation of a “Social Protection Floor” to provide social security for all.<sup>681</sup>

The *Older Workers Recommendation, 1980, (No. 162)*,<sup>682</sup> aims to protect the rights of older workers with equality of treatment and gives practical measures that should be implemented for employment, social security, and retirement. The ILO’s understanding of age and older persons is much more far-reaching than this. It notes that “age” is a relatively new ground for discrimination.<sup>683</sup>

States have expanded the grounds on which discrimination is prohibited beyond those expressly mentioned in the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*,<sup>684</sup> which allows states to adopt special measures to protect against age discrimination; including the *Workers with Family Responsibilities Convention, 1981 (No. 156)*,<sup>685</sup> that protects workers who take care of older persons and protects older workers who started work late in their lives because they were caring for families; the *Employment Policy Convention, 1964, (No. 122)*<sup>686</sup> that sets standards for employment policy regarding vulnerable groups, including older people; and the *Human Resources Development Convention, 1975, (No. 142)*,<sup>687</sup> which indicates that career guidance and vocational training should not discriminate on the basis of age.

Several ILO conventions and declarations recognize the right to social security, including the Declaration of Philadelphia on the aims and purposes of the ILO to pursue “the extension of social security measures to provide a basic income to all

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<sup>680</sup>See, *Equality at Work: Tackling the Challenges. Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* Report of the Director-General, 147–52, (2007) available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms\\_082607.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf). (last visited Oct. 23, 2014).

<sup>681</sup>*Building Social Protection Floors and Comprehensive Social Security Systems*, Int’l Labor Org., available at <http://www.ilo.org/gimi/gess/ShowTheme.do?tid=1321>.

<sup>682</sup>*Older Workers Recommendation*, Section II, paragraph 5(g) (1980) available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R162> (last visited Oct. 23, 2014).

<sup>683</sup>*Report VI, Gender Equality, Report on Equality at work*, Int’l Labor Org. (2009) available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_105119.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_105119.pdf). (last visited Oct. 23, 2014).

<sup>684</sup>*Discrimination (Employment and Occupation), 1958 Convention (No. 111*, Int’l Labor Org., Article 5, p.9. available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C111](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C111) (foreseeing the possibility of special measures to meet the particular needs of workers based on age).

<sup>685</sup>*Workers with Family Responsibilities Convention*, Int’l Labor Org., (1981) available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C156> (last visited Oct. 23, 2014).

<sup>686</sup>*Employment Policy Convention*, Int’l Labor Org. (1964) available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C122> (last visited Feb. 19, 2015).

<sup>687</sup>*Human Resources Development Convention*, Int’l Labor Org. (1975) <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C142> (last visited Oct. 23, 2014).

in need of such protection and comprehensive medical care.”<sup>688</sup> The main standards are established by the *Convention on Minimum Standards of Social Security, 1952, (No. 102)*,<sup>689</sup> which establishes worldwide minimum standards for social security equality and anti-discrimination, and the *Convention on Invalidity, Old-Age and Survivors' Benefits, 1967, (No. 128)*.<sup>690</sup>

The VI report of the International Labour Conference, 98th Session, 2009 referred to other instruments regarding older persons such as:

the *Employment Policy Convention, 1964 (No. 122)*, which “promotes full, productive and freely chosen employment’ for all who are available for and seeking work’, ‘with a view to stimulating economic growth and development, raising standards of living, and overcoming unemployment and underemployment’. Although it does not specifically mention either women or older workers, the *Human Resources Development Convention, 1975 (No. 142)*, can be used to support vocational training and lifelong learning for all adults. The recently adopted *Human Resources Development Recommendation, 2004 (No. 195)*, and the *Employment Relationship Recommendation, 2006 (No. 198)*, each contain specific references. Used together, they make a strong case for the inclusion of older women in formal work.<sup>691</sup>

ILO’s report on *Gender equality at the heart of decent work*<sup>692</sup> highlights discrimination and its detrimental effects on women, in particular. In its conventions and reports, equality and non-discrimination come through as major themes.

## 2. World Health Organization

The World Health Organization’s policies for older persons follow the goals and standards set forth in MIPAA<sup>693</sup> for preventive health care,<sup>694</sup> active participation

<sup>688</sup>Normlex, Information on Labor Standards, Int’l Labor Org. <http://www.ilo.org/ilolex/english/constq.htm#jo>. (last visited Oct. 23, 2014) (The Declaration of Philadelphia was adopted at the 26th Conference of the International Labour Organisation in 1944 and was added as annex to the ILO’s constitution. The Declaration focused on a series of aims and purposes of the ILO).

<sup>689</sup>*Equal Remuneration Convention, (No. 100)*, (1951) available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C100;Discrimination\(EmploymentandOccupation\)Convention,1958\(No.111\)http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C111](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C100;Discrimination(EmploymentandOccupation)Convention,1958(No.111)http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C111) (last visited Oct. 23, 2014) (addressing discriminatory practices and principles of equal pay for work of equal value).

<sup>690</sup>*Invalidity, Old-Age, and Survivors' Benefits Convention (No. 128)*, Int’l Labor Org., (1967) available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C128> (last visited Oct. 23, 2014).

<sup>691</sup>*Gender Equality at the Heart of Decent Work*, Int’l Labor Conference, 386 (2009) available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_105119.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_105119.pdf) (last visited Feb. 19 2015).

<sup>692</sup>*International Labour Conference, 98th Session, 2009, Gender Equality at the Heart of Decent Work*, Int’l Labor Org., (2009) available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_105119.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_105119.pdf). (last visited Oct. 23, 2014).

<sup>693</sup>*A Global Response to Elder Abuse and Neglect*, World Health Organization, (2008) available at [http://www.who.int/ageing/publications/ELDER\\_DocAugust08.pdf](http://www.who.int/ageing/publications/ELDER_DocAugust08.pdf).

<sup>694</sup>*Strengthening Active and Healthy Ageing*, WHA58.16, (2005) [http://apps.who.int/gb/ebwha/pdf\\_files/WHA58/WHA58\\_16-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA58/WHA58_16-en.pdf). (last visited Oct. 23, 2014).

in society,<sup>695</sup> and social security.<sup>696</sup> The WHO's areas of focus in its policy documents and reports, are on primary health care, HIV/AIDS, and elder abuse.<sup>697</sup>

The WHO works toward the elimination and prevention of elder abuse by advocating for strengthened laws explicitly protecting older persons, ending customs of abuse, such as the abandonment of widows and abuse predicated on allegations of witchcraft, and prevention strategies for caregivers.<sup>698</sup> It concluded that the problem of elder abuse cannot be properly solved if the essential needs of older persons—access to health care, food and shelter, and security, — are not met.<sup>699</sup> It emphasizes state-specific health, participation and security as the pillars of healthy aging, and encourages consensus building that addresses the concerns of multiple sectors.<sup>700</sup>

Its approved resolution in the World Health Assembly, *Strengthening Active and Healthy Ageing* (2005),<sup>701</sup> stressed the need for public health policies geared toward aging. Policy documents from the WHO regarding older persons have included reports on violence against older persons,<sup>702</sup> recommending stronger national laws preventing elder abuse, access to essential materials and information, and participation in society. These recommendations tie in closely with the right to be free from violence, the right to information, and the right to participation explored above. Another aspect of the crime of elder abuse is the limitation of primary health care capacity to address it in the medical setting. The WHO has sought to raise awareness and training for primary health care providers to detect and intervene in elder abuse or neglect.<sup>703</sup> This intervention represents a path for which medical and legal professionals could work together to support the rights of older persons to live lives with the highest attainable standard of health, free from violence.

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<sup>695</sup> *Active Ageing-A Policy Framework*, World Health Org. (2002) available at [http://whqlibdoc.who.int/hq/2002/WHO\\_NMH\\_NPH\\_02.8.pdf](http://whqlibdoc.who.int/hq/2002/WHO_NMH_NPH_02.8.pdf) (last visited Feb. 19, 2015).

<sup>696</sup> *Id.* at 44–46.

<sup>697</sup> *International Plan of Action on Ageing: WHO Report on Implementation*, World Health Org., (Nov. 2004) available at [http://apps.who.int/gb/archive/pdf\\_files/EB115/B115\\_29-en.pdf](http://apps.who.int/gb/archive/pdf_files/EB115/B115_29-en.pdf).

<sup>698</sup> *World Health Report on Violence and Health - Abuse of the Elderly*, World Health Org., available at [http://www.who.int/violence\\_injury\\_prevention/violence/global\\_campaign/en/chap5.pdf](http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap5.pdf) (last visited Feb. 19, 2015).

<sup>699</sup> *Id.*

<sup>700</sup> *Id.* at 55.

<sup>701</sup> WHA 58.16: Resolution on Strengthening Active and Healthy Ageing, available at: [http://www.monitoringris.org/documents/norm\\_glob/WHA58\\_16-en.pdf](http://www.monitoringris.org/documents/norm_glob/WHA58_16-en.pdf).

<sup>702</sup> *World Health Report on Violence and Health - Abuse of the Elderly*, World Health Org., available at [http://www.who.int/violence\\_injury\\_prevention/violence/global\\_campaign/en/chap5.pdf](http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap5.pdf) (last visited Feb. 19, 2015).

<sup>703</sup> *A Global Response to Elder Abuse and Neglect: Building Primary Health Care (PHC) Capacity to Deal with the Problem Worldwide: Main Report*, World Health Organization, (2008) available at [http://www.who.int/ageing/publications/ELDER\\_DocAugust08.pdf](http://www.who.int/ageing/publications/ELDER_DocAugust08.pdf) (last visited Oct. 23, 2014) (Annex 4: Summaries of Country Reports; again, a bunch of materials of elder abuse in the references).

Health, participation, and security are all highlighted by the WHO as problems for older persons in emergencies.<sup>704</sup> The WHO has sought to build institutional capacity and commitment of governments, the capacity of health care systems, develop expertise, and promote active aging as a strategy to reduce vulnerability and develop resiliency.<sup>705</sup>

Overall, the WHO's approach can be characterized by strengthening of health care delivery systems and increased attention to often overlooked health issues of older persons such as their vulnerability to HIV/AIDS, and vulnerability to abuse.

### 3. PAHO

PAHO policies consider United Nations Principles for Older Persons (independence, participation, care, self-fulfillment, and dignity) of 1991 when creating public policies on aging and health for the region of Latin America and the Caribbean. In PAHO's Sanitary Conference and the Directing Council, the human rights of older persons are expressly incorporated in policies and decisions. PAHO has focused on the issues of specialized health delivery systems and preparedness for older persons due to their uniquely vulnerable status.

It encourages the adoption of national policies, strategies, plans, and programs that increase older persons' access to health programs and services, including health promotion and disease prevention programs, in order to achieve active aging. It has successfully promoted dialogue to increase support for initiatives targeted at promoting older persons' health such as supporting capacity building for training the human resources for the health needs of older persons.<sup>706</sup> Care and support are important for this growing population, and primary care is one key to their health.<sup>707</sup>

PAHO advocates for the promotion and protection of older persons' basic human rights by adopting legal frameworks and implementation mechanisms in collaboration with the Permanent Council of the Organization of American States ("OAS"). Along with other organizations there, it has examined the possibility of

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<sup>704</sup>Active Ageing-A Policy Framework Policy Response, World Health Organization, (2008) available at [http://whqlibdoc.who.int/hq/2002/WHO\\_NMH\\_NPH\\_02.8.pdf](http://whqlibdoc.who.int/hq/2002/WHO_NMH_NPH_02.8.pdf) (last visited Oct. 23, 2014).

<sup>705</sup>David Hutton, *Older People in Emergencies: Considerations for Action and Policy Development*, by, World Health Org., (2008) available at [http://www.who.int/ageing/publications/Hutton\\_report\\_small.pdf](http://www.who.int/ageing/publications/Hutton_report_small.pdf) (last visited Feb. 19, 2015).

<sup>706</sup>CD49.R15 *Plan of Action on the Health of Older Persons, Including Active and Healthy Aging*.

<sup>707</sup>*Health and Ageing* 26<sup>th</sup> Pan American Sanitary Conference CSP26/13 (Eng.) (July 10 2002) available at <http://www.paho.org/english/gov/csp/csp26-13-e.pdf>.



preparing an inter-American convention on the rights of older persons.<sup>708</sup> In its policy documents, health and access to health care are legally protected rights, taking into account social and economic determinants of health.<sup>709</sup> It emphasizes gender equality, and explicitly includes a human rights perspective.<sup>710</sup> It has increasingly advocated for a human rights framework with binding applicability.<sup>711</sup>

PAHO's overarching body is the Sanitary Conference, which decides on the plans and policies of the Directing Council. In reaction to the creation of MIPAA, it urges national plans of action on aging.<sup>712</sup> It further discusses a plan of action on aging, including a collaboration of the PAHO Directing Council with the OAS Permanent Council on the meeting of experts and the potential convention on the rights of older persons.<sup>713</sup> It has called for implementation of public policies and legal frameworks to improve the determinant factors of health and reduce disparities among vulnerable groups, including older people.<sup>714</sup>

PAHO has also looked at how older persons have some special health considerations that are often overlooked. It has focused on a regional response to demographic changes and the increased need to prepare for population aging.<sup>715</sup> The response should include specific, primary care for different life stages.<sup>716</sup> They have a right to research and benefit from research,<sup>717</sup> specialized mental health

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<sup>708</sup>142nd Session of the Executive Committee Health of Older Persons, Including Active and Healthy Aging: Regional Strategy, World Health Org., (June 9 2008) available at [http://new.paho.org/hq/index.php?option=com\\_docman&task=cat\\_view&Itemid=139&gid=1303&orderby=dmdate\\_published&asc=DESC](http://new.paho.org/hq/index.php?option=com_docman&task=cat_view&Itemid=139&gid=1303&orderby=dmdate_published&asc=DESC) (Annex Table 1 and 2, practices of nations in Americas).

<sup>709</sup>Family and Community Health, World Health Org., CD49/20 (Aug 17 2009) available at <http://www2.paho.org/hq/dmdocuments/2009/CD49-20-e.pdf>.

<sup>710</sup>Plan of Action on the Health of Older Persons, Including Active and Healthy Aging, 49th Directing Council, World Health Org., (Sep. 28-Oct. 2 2009) available at [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=1640&Itemid=1425&lang=en](http://new.paho.org/hq/index.php?option=com_content&task=view&id=1640&Itemid=1425&lang=en).

<sup>711</sup>Health of Older Persons, including Active and Healthy Aging: Regional Strategy 142nd Session of the Executive Committee, (Document CE142/14) at para. 106., (June 23–27 2008) available at <http://www.paho.org/english/gov/ce/ce142index-e.htm>.

<sup>712</sup>Pan American Sanitary Conference Resolution on Health and Ageing, World Health Org., (Sep. 23–27 2002) available at <http://www.paho.org/english/gov/csp/csp26.r20-e.pdf>.

<sup>713</sup>Id.

<sup>714</sup>CD43.R11, 43rd Directing Council, Resolution on Health Promotion in the Americas.

<sup>715</sup>Plan of Action on the Health of Older Persons, Including Active and Healthy Aging, 144th Sess. of the Exec. Comm., Document CE144/9, .. (June 22–26 2009) available at [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=1281&Itemid=1258&lang=en](http://new.paho.org/hq/index.php?option=com_content&task=view&id=1281&Itemid=1258&lang=en).

<sup>716</sup>Family and Community Health 144th Sess. of the Exec. Comm., Document CE144/21 (June 22–26 2009) 200 available at [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=1281&Itemid=1258&lang=en](http://new.paho.org/hq/index.php?option=com_content&task=view&id=1281&Itemid=1258&lang=en).

<sup>717</sup>Policy on Research for Health (Document CD49/10) 46; Resolution on Regional Program on Bioethics 42nd Directing Council, CD42.R6 (Sep. 25–29 2000) available at <http://www.paho.org/english/gov/cd/cd42index.htm>.

services,<sup>718</sup> and vaccinations.<sup>719</sup> It has noted that some diseases, like tuberculosis, are more likely to affect older people.<sup>720</sup> It has also noted the need to enhance prevention efforts directed toward particularly affected and vulnerable groups.<sup>721</sup>

PAHO has taken a wide-ranging approach to health. It is one of the only regional health organizations to discuss disability and aging, and how disability can arise from aging.<sup>722</sup> It emphasizes that disability prevention in aging is an important component of health.<sup>723</sup> It has addressed such wide-ranging topics such as older persons being particularly vulnerable to climate change,<sup>724</sup> to chronic disease,<sup>725</sup> to gender equality in sexual and reproductive health policies.<sup>726</sup>

#### 4. World Bank

The Bank's mandate does not include any reference to human rights, but it does inform a broad and comprehensive interpretation of legal empowerment of the

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<sup>718</sup>Strategy and Plan of Action on Mental Health (Document CD49/11); *Resolution on Mental Health*, World Health Org., CD43/15 <http://www.paho.org/english/gov/cd/cd43index-e.htm> (last visited Oct. 23, 2014).; CD49.R15, Plan of Action on the Health of Older Persons, Including Active and Healthy Aging.

<sup>719</sup>*Influenza Pandemic: Preparation in the Hemisphere* 44th Directing Council, CD44.R8, (Sep. 22–26 2003) available at <http://www.paho.org/english/gov/cd/cd44index-e.htm>.

<sup>720</sup>*Regional Strategy for the Control of Tuberculosis for 2005–2015* (Documents CE136/17 and CE136/17, Corrig.), 136th Sess. of the Exec. Comm., at 214. (June 20–24 2005) available at <http://www.paho.org/english/gov/ce/ce136index-e.htm>.

<sup>721</sup>43rd Directing Council, *Resolution on Acquired Immunodeficiency Syndrome (AIDS) in the Americas* CD43.R16, World Health Org., available at <http://iris.paho.org/xmlui/bitstream/handle/123456789/1431/cd43.r16-e.pdf?sequence=1>. (last visited Oct. 23, 2014).

<sup>722</sup>*Disability: Prevention and Rehabilitation in the Context of the Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health and Other Related Rights* 47th Directing Council, CD47.R1 (Sep. 25–29 2006) available at <http://www.paho.org/english/gov/cd/cd47index-e.htm>.

<sup>723</sup>*Disability: Prevention and Rehabilitation in the Context of the Enjoyment of the Highest Attainable Standard of Health and other Related Rights* (Document CE138/15) 138th Sess. of the Exec. Comm., para. 144. (June 19–23 2006) available at <http://www.paho.org/english/gov/ce/ce138index-e.htm>.

<sup>724</sup>*Roundtable on Climate Change and its Impact on Public Health: A Regional Perspective* (Documents CD48/16, CD48/16, Add. I, Rev. 2, and CD48/16, Add. II) 48th Directing Council, 10829 (Sep–Oct. 3 2008) available at [http://new.paho.org/hq/index.php?option=com\\_content&task=view&id=770&Itemid=733&lang=en](http://new.paho.org/hq/index.php?option=com_content&task=view&id=770&Itemid=733&lang=en).

<sup>725</sup>CE138.R1 *Chronic Diseases, including Diet and Physical Activity*.

<sup>726</sup>*Subcommittee on Women, Health, and Development* (Documents CE136/7 and CE136/8) 136th Session of the Executive Committee, 32. (June 20–24 2005) available at <http://www.paho.org/english/gov/ce/ce136index-e.htm>.

poor that encapsulates both poverty reduction and governance initiatives<sup>727</sup> within the legal limits imposed by its Articles of Agreement.<sup>728</sup> Rights-based approaches (RBA) to development are based on the fundamental principles of equality and non-discrimination, and play an increasing role in the Bank's development work, as shareholders pay increasing attention to human rights, and as it becomes a clearer path to improving development.<sup>729</sup>

The World Bank has issued a number of policy papers addressing human rights in development, poverty reduction, and principles of equality and non-discrimination,<sup>730</sup> and analyzing where development activities and human rights are interrelated. The international human rights framework can help inform a broad interpretation of legal empowerment of the poor that encapsulates both poverty reduction and governance initiatives.<sup>731</sup>

In considering the CRPD, the World Bank has published a guide, noting that development is based on the fundamental principles of equality and non-discrimination, and its mandate "does not preclude the integration of disability issues as reflected in the CRPD in support of its operations."<sup>732</sup> These approaches, while not directly implicating older persons, are principled on equality and non-discrimination for the advancement of development, which would include the older people.

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<sup>727</sup>Id. at p.37.

<sup>728</sup>Ana Palacio, *The Way Forward - Human Rights and the World Bank*, by Special Report, Development Outreach, World Bank Institute at P. 36. ("Political human rights in particular have traditionally been considered to lie beyond the permitted range of considerations under the Articles of Agreement, which bar decisions based on political considerations or political systems, as well as interference in domestic political affairs of its members. The World Bank's role is a facilitative one, in helping our members realize their human rights obligations. In this sense, human rights would not be the basis for an increase in Bank conditionalities, nor should they be seen as an agenda that could present an obstacle for disbursement or increase the cost of doing business.").

<sup>729</sup>See generally, Katherine Guernsey, Marco Nicoli and Alberto Ninio, *Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank*, The World Bank, (June 2007) <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf>.

<sup>730</sup>Klaus Decker, Siobhán McInerney-Lankford and Caroline Sage, *WORKING PAPER: Human Rights and Equitable Development: "Ideals", Issues and Implications* (2006) available at [http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Human\\_Rights\\_and\\_Equitable\\_Development\\_Ideals\\_Issues\\_and\\_Implications.pdf](http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Human_Rights_and_Equitable_Development_Ideals_Issues_and_Implications.pdf) (last visited Oct. 23, 2014).

<sup>731</sup>Ana Palacio, *The Way Forward - Human Rights and the World Bank*, World Bank Institute Special Report available at <http://siteresources.worldbank.org/EXTSITETOOLS/Resources/PalacioDevtOutreach.pdf> (last visited Oct. 23, 2014).

<sup>732</sup>See Katherine Guernsey, Marco Nicoli and Alberto Ninio *Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank*, The World Bank (June 2007) available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf>.

### *a. International Development Association*

IDA projects have the primary goal of domestic economic growth to increase the living standards of the population: “The content of country I-PRSP’s [Interim Poverty Reduction Strategy Papers] and PRSP’s [Poverty Reduction Strategy Papers] has stressed the central importance of achieving strong and sustained economic growth as a *sine qua non* of effective poverty reduction.”<sup>733</sup> IDA views improvement in the well-being of disadvantaged groups as ensuring an overall increase in living standards of a country.<sup>734</sup> It pays extra attention to the disadvantaged human and social capital-building,<sup>735</sup> to reduce economic and social vulnerability.<sup>736</sup> This directly affects the well-being of older persons as a group, and as members of other vulnerable groups facing multiple discriminations. The IDA’s focus is often on disadvantaged groups to increase the average well-being of their communities.<sup>737</sup>

The IDA has a number of policy publications, which take into account the situations of vulnerable groups, or situations which affect older persons directly. It prioritizes grants for older persons’ households<sup>738</sup>; it has also set aside funds targeted vulnerable groups and older persons, specifically<sup>739</sup>; sought to entice elderly persons to use public transit<sup>740</sup>; program fosters local participation in development processes, for those groups typically left out.<sup>741</sup>

According to Progress Report of IDA12 implementation some PRSP’s focus “more generally on reducing regional disparities and improving the socio-economic status of women and other disadvantaged groups (such as the elderly or

<sup>733</sup>*Progress Report on IDA Implementation*, Int’l Dev. Ass’n, (Feb. 2001) available at <http://siteresources.worldbank.org/IDA/Resources/Seminar%20PDFs/progress%20report.pdf>.

<sup>734</sup>*Nepal: Building Peaceful, Prosperous and Just New Nepal*, Int’l Dev. Ass’n, available at [http://siteresources.worldbank.org/IDA/Resources/IDA-Nepal.pdf?cid=ISG\\_E\\_WBWeeklyUpdate\\_NL](http://siteresources.worldbank.org/IDA/Resources/IDA-Nepal.pdf?cid=ISG_E_WBWeeklyUpdate_NL) (last visited Oct. 23, 2014).

<sup>735</sup>*Id.*

<sup>736</sup>*Eastern Caribbean States: Reducing Vulnerability and Supporting Growth and Competitiveness*, Int’l Dev. Ass’n, available at <http://siteresources.worldbank.org/IDA/Resources/IDA-OECS.pdf> (last visited Oct. 23, 2014).

<sup>737</sup>*Tamil Nadu Empowerment and Poverty Reduction Project*, Int’l Dev. Ass’n, available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,contentMDK:22301573~menuPK:4754051~pagePK:51236175~piPK:437394~theSitePK:73154,00.html> (last visited Oct. 23, 2014).

<sup>738</sup>*Public Works and Grants Create a Safety Net*, Int’l Dev. Ass’n, (Aug. 2009) available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,contentMDK:21395349~menuPK:3266877~pagePK:51236175~piPK:437394~theSitePK:73154,00.html>.

<sup>739</sup>*Getting People and Traffic Moving Again in Lagos*, Int’l Dev. Ass’n, s. (last visited Oct. 23, 2014). <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,contentMDK:2229765~menuPK:4754051~pagePK:51236175~piPK:437394~theSitePK:73154,00.html>.

<sup>740</sup>*Community-Driven Development*, Int’l Dev. Ass’n, available at <http://siteresources.worldbank.org/IDA/Resources/IDA-CDD.pdf>. (last visited Oct. 23, 2014).

<sup>741</sup>*International Development Association Report*, available at <http://siteresources.worldbank.org/IDA/Resources/Seminar%20PDFs/progress%20report.pdf> (last visited Oct. 23, 2014).

indigenous peoples).<sup>742</sup> For example, the *Tamil Nadu Engenders Empowerment and Voice*<sup>743</sup> (Tamil Nadu Empowerment and Poverty Reduction Project) include government efforts to focus on enhancing the lives of disadvantaged groups; the *Honduras 2.5 Million Benefit From Social Investment Fund*<sup>744</sup> was designed to develop social assistance programs for disadvantaged groups; the *Access to Technical Education in India*<sup>745</sup> included vulnerable groups in technician education though formal and informal education and training and the *Nepal: Building a Peaceful, Prosperous and Just New Nepal*<sup>746</sup> concentrates on expanding and honing social programs to increase opportunities and wellbeing, especially for the poor and excluded.

While it is difficult to see a unified approach to aging in the policies of the IDA, it is clear that issues affecting the elderly and other vulnerable groups are to be included in its focus.

## G. The Human Rights of Older Persons and Millennium Development Goals

The Millennium Development Goals (MDG's) are eight benchmarks to combat important challenges in development.<sup>747</sup> The goals are codified in the United Nations Millennium Declaration.<sup>748</sup> They include such crucial international development issues as: curbing poverty and hunger; providing primary education to all; empowering women; reducing child mortality; improving maternal health; stopping the spread of HIV, AIDS, malaria, and other diseases; ensuring environmental sustainability; and focusing on international cooperation as a means of eradicating poverty

<sup>742</sup>*Progress Report on IDA 12 Implementation*, 26 (Feb. 2001) available at <http://siteresources.worldbank.org/IDA/Resources/Seminar%20PDFs/progress%20report.pdf>.

<sup>743</sup> *Tamil Nadu Empowerment and Poverty Reduction Project*, Int'l Dev. Ass'n, available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:22301573~menuPK:4754051~pagePK:51236175~piPK:437394~theSitePK:73154,00.html> (last visited Oct. 23, 2014).

<sup>744</sup>*Honduras 2.5 Million Benefit From Social Investment Fund*, Int'l Dev. Ass'n, available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:21940442~pagePK:51236175~piPK:437394~theSitePK:73154,00.html> (last visited Oct. 23, 2014).

<sup>745</sup>*Access to Technical Education in India*, Int'l Dev. Ass'n, available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:21387625~menuPK:3266877~pagePK:51236175~piPK:437394~theSitePK:73154,00.html>. (last visited Oct. 23, 2014).

<sup>746</sup>*Nepal: Building a Peaceful, Prosperous and Just New Nepal*, Int'l Dev. Ass'n, available at [http://siteresources.worldbank.org/IDA/Resources/IDA-Nepal.pdf?cid=ISG\\_E\\_WBWeeklyUpdate\\_NL](http://siteresources.worldbank.org/IDA/Resources/IDA-Nepal.pdf?cid=ISG_E_WBWeeklyUpdate_NL) (last visited Oct. 23, 2014).

<sup>747</sup>See The Millennium Assembly of the United Nations, *Millennium Summit*, A/Res/55/2 (Sep. 18 2000) available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/55/2](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/2).

<sup>748</sup>*Id.*

worldwide.<sup>749</sup> Every country in the world, along with national and international development organizations, has agreed to seek to achieve these goals by 2015.<sup>750</sup>

While the focus of the MDG's is laudable, the goals are regrettably silent in their treatment of older persons. The goals have also largely sidestepped the human rights narrative. Below we will discuss the inextricable linkages the MDG's, human rights and older persons, ending with some visions of what MDG's inclusive of older persons might look like.

After a decade of high-level United Nations conferences and summits, world leaders met at the United Nations Headquarters in New York in September 2000 to adopt the United Nations Millennium Declaration.<sup>751</sup> The leaders made a commitment to create a global partnership that would seek to achieve the goals of the Millennium Declaration, which deal chiefly with reducing extreme poverty by 2015.<sup>752</sup> The goals articulated in that meeting became known as the Millennium Development Goals.<sup>753</sup> Two years later, the United Nations Secretary General commissioned the Millennium Project, which aimed to create a plan that nations could follow to achieve the MDG's.<sup>754</sup> Soon thereafter, the United Nations Millennium Campaign was launched. The Campaign sought to motivate all members of the international community, including governments, civil society organizations, and the private sector, to act in achieving the MDG's.<sup>755</sup> In the 2010 MDGs summit,<sup>756</sup> the highlight of the meeting was the adoption of the global action plan titled, "Keeping the Promise: United to Achieve the Millennium Development Goals."<sup>757</sup> Furthermore, focusing on the accelerated improvement of the health of women and children, a number of the summit attendees pledged \$40 billion to achieve the goals in these areas by 2015.

The MDG's and human rights overlap in several ways. The essence of the Millennium Declaration is the notion that "men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice."<sup>758</sup> Human rights, which are universal, indivisible,

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<sup>749</sup>See United Nations Development Program, *Human Rights and the Millennium Development Goals: Making the Link*, Page 6, available at <http://www.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/water-governance/human-rights-and-the-millennium-development-goals-making-the-link/Primer-HR-MDGs.pdf>. (last visited Oct. 23, 2014).

<sup>750</sup>See United Nations, *Background: United Nations Millennium Development Goals*, (2013) <http://www.un.org/millenniumgoals/bkgd.shtml>. (last visited Oct. 23, 2014).

<sup>751</sup>*Id.*

<sup>752</sup>*Id.*

<sup>753</sup>*Id.*

<sup>754</sup>*Id.*

<sup>755</sup>*Id.*

<sup>756</sup>*Id.*

<sup>757</sup>*Id.*

<sup>758</sup>See United Nations, *United Nations Millennium Declaration*, A/res/55/2, 6, available at <http://www.un.org/millennium/declaration/ares552e.htm>. (last visited Oct. 23, 2014).

and inalienable, refer to the rights possessed by all persons by virtue of their common humanity, to live in freedom and dignity.<sup>759</sup> Though the core of the MDG's is making concrete improvements in human development, both have in common the purposes of promoting human development and welfare, and respecting the dignity of all people.<sup>760</sup> They also share the key elements of participation, empowerment, and national ownership.<sup>761</sup> Further, both the MDG's and human rights are tools with which governments can be held accountable.<sup>762</sup>

Finally, the MDG's and human rights are linked in that they are interdependent and mutually-reinforcing frameworks.<sup>763</sup> In other words, through concrete actions, the MDG's strive to increase the wellbeing of all people, especially in terms of economic and social rights. In many respects, bettering the wellbeing of all persons leads to respect for their human rights.<sup>764</sup> In turn, human rights serve as legal and moral support for efforts to achieve the MDG's.<sup>765</sup>

In addition, a human rights approach to attaining the MDG's is useful in terms of creating informed policy responses, monitoring, and evaluation.<sup>766</sup> Following this approach, practitioners should identify the rights that have been violated in the development process, understand the reasons for discrimination that disallow certain individuals or groups to access certain processes, and identify how to remedy the situation.<sup>767</sup>

Though the MDG's focus on the increased wellbeing of all people, they specifically set forth targets for poverty reduction and enhanced welfare for women and children. In contrast, older persons are not mentioned.<sup>768</sup> As a vulnerable group, due to their susceptibility to discrimination and abuse, as well as their role as caregivers for large populations of women and children, older persons should be included in any future MDG's or similar development target structures.

Further, the lack of mention of older persons is staggering in view of the rapid population aging taking place in the world. Statistics highlight the importance of prioritizing older persons in development strategies; by 2050, almost 2 billion

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<sup>759</sup>United Nations Development Program, *Human Rights and the Millennium Development Goals: Making the Link*, Page 6, <http://www.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/water-governance/human-rights-and-the-millennium-development-goals-making-the-link/Primer-HR-MDGs.pdf>. (last visited Oct. 23, 2014).

<sup>760</sup>*Id.* at 7.

<sup>761</sup>*Id.*

<sup>762</sup>*Id.*

<sup>763</sup>*Id.*

<sup>764</sup>*Id.*

<sup>765</sup>*Id.* at 16.

<sup>766</sup>*Id.* at 11.

<sup>767</sup>*Id.*

<sup>768</sup>See *United Nations Millennium Declaration*, United Nations, A/Res/55/2, available at <http://www.un.org/millennium/declaration/ares552e.htm> (last visited Oct. 23, 2014).



persons will be 60 years old or above, and eighty percent of these persons will live in developing countries.<sup>769</sup> Population aging presents a unique set of challenges for countries worldwide, including, among others, a rise in ageism, which denies older persons the rights and opportunities available to other adults, strains on pension and social security systems, increasing demand for healthcare.<sup>770</sup> All of these challenges intersect with the MDG's' focus on lifting persons around the world out of extreme poverty and providing the opportunity for wellbeing. It follows that the wellbeing of older persons will have a strong influence on the attainment of the MDG's. Indeed, the President of the General Assembly, speaking on the United Nations International Day of Older Persons in 2003, echoed this sentiment, stating that "it is difficult to imagine how countries may progress if such a significant proportion of the population is not taken into account in the development process."<sup>771</sup>

The Madrid Plan of Action (MIPAA) clarifies the urgency and importance for increased concern of the elderly in international development instruments. MIPAA resolves to ensure that older persons live in security and dignity. It also recognizes that the specific concerns of older persons must be addressed within the major objectives of the international development agenda.<sup>772</sup> This has not yet been accomplished.

The appraisal of a Post-2015 agenda opens the door for advocacy efforts in support of the inclusion of the rights of older people. Several justifications grounded in human rights law exist for the insertion of a goal or goals dealing specifically with older people. First, older persons face stereotyping and discrimination based on age, which leads to their marginalization. As such, they are denied the dignity and rights established in Article 1 of the Universal Declaration of Human Rights.<sup>773</sup> In addition, older women in particular suffer discrimination based on their age.<sup>774</sup> They are most vulnerable to verbal, sexual, and psychological aggression and to financial abuse, based on compounded societal disadvantages.<sup>775</sup> In spite of all of this, international human rights conventions do not adequately

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<sup>769</sup>*World Economic and Social Survey 2007: Development in an Ageing World*, United Nations Department of Economic and Social Affairs, 3, available at [http://www.un.org/en/development/desa/policy/wess/wess\\_archive/2007wess.pdf](http://www.un.org/en/development/desa/policy/wess/wess_archive/2007wess.pdf) (last visited Oct. 23, 2014).

<sup>770</sup>*Ageing and Life-Course*, World Health Org., available at <http://www.who.int/ageing/en/> (last visited Oct. 23, 2014).

<sup>771</sup>See UN General Assembly, *President of the 58th Session of the Statements*, (Oct. 1 2003) available at <http://www.un.org/ga/president/58/speeches/031001-2.htm>.

<sup>772</sup>*World Economic and Social Survey 2007: Development in an Ageing World*, United Nations Department of Economic and Social Affairs, E/2007/50/Rev. 1, pg 32, available at [http://www.un.org/en/development/desa/policy/wess/wess\\_archive/2007wess.pdf](http://www.un.org/en/development/desa/policy/wess/wess_archive/2007wess.pdf) (last visited Oct. 23, 2014).

<sup>773</sup>*Preamble, The Universal Declaration of Human Rights*, <http://www.un.org/en/documents/udhr/>. (last visited Oct. 23, 2014).

<sup>774</sup>Open-Ended Working Group on Ageing, United Nations (Apr. 18–21 2011) available at <http://social.un.org/ageing-working-group/documents/AI-%20Suwaidi%20OEWG%20on%20Ageing.pdf>.

<sup>775</sup>*Id.*

protect older people, and they remain on the margins of development work around the world.

Without an international convention, states do not have a comprehensive guide to articulate enforceable obligation in order to better protect this often-vulnerable group. This not only creates a gap in protection, but also a lack of accountability and, very importantly, clear focus of the international community on rights of older persons. Although the Convention on the Rights of Persons with Disabilities references the elderly, it does so solely in the context of persons with disabilities.<sup>776</sup> An international convention to protect and enforce human rights for the elderly would create a binding comprehensive framework that defines the rights of older persons, identifies responsibilities of member states, and creates solutions through which the rights of older persons can be adequately protected.<sup>777</sup>

In concert with an international convention that protects the rights of older persons, the universal goals could fill in the gaps in terms of practical, tangible methods of ensuring the elderly of their rights and raising their level of wellbeing. The Post-2015 agenda must take account of all people, especially vulnerable groups, in terms of creation and delivery of the goals.

## H. Conclusion

Older persons' rights have been expressly recognized in a few economic, social and cultural rights,<sup>778</sup> but the world's understanding of economic, social and cultural rights has changed dramatically. There is increasing recognition of the inter-relatedness of civil and political rights with economic, social and cultural rights. For an example of this relationship, consider the (civil and political) rights to a fair trial and to non-discrimination. These may protect older persons from certain types of forced retirement and slow judicial proceedings regarding (economic and social rights to) health or social benefits. Rights to these benefits can be immediately necessary to protect other rights.<sup>779</sup> Violence and abuse, inhumane treatment and violations of the right to property in social pensions cases are all violations of civil and political rights, though they are no often discussed in the context of what they mean for the lives of older persons in their social and economic environment.

Population change, climate change, and migration to urban areas will all change the social landscape in the coming decades. The negative effects of these global trends on the lives of older persons can be combated by promoting the full enjoyment of their human rights and fundamental freedoms. Aging should be viewed as part of the life course, and not as a condition apart from the rest of

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<sup>776</sup>Id.

<sup>777</sup>Id.

<sup>778</sup>Diego Rodriguez-Pinzon and Claudia Martin, *supra* note 254.

<sup>779</sup>*See* Id. at 921.

society.<sup>780</sup> Older persons' full participation will result in enhanced quality of life for individuals, stronger societies and economies, and it lays the groundwork for improving the economic and social conditions prevalent in society and the eradication of poverty.<sup>781</sup>

In the public domain, older persons may be denied equity in opportunities available to them and in resources allocated to them. Older persons are often not active participants in society. Barriers precluding the participation of older persons include poverty; poor health; low educational levels; lack of transportation and access to services; negative stereotypes about aging; and overt or subtle age discrimination.<sup>782</sup> Independence, participation, care, self-fulfillment, and dignity are rarely addressed within the legal framework of the UN.<sup>783</sup> Policy structures across different countries have focused on health, nutrition, long-term care, and social security. A more proactive, inclusive and rights-based approach for older persons<sup>784</sup> will improve the outlook for both individuals and society.

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<sup>780</sup>Kelly Report, *supra* note 30, at 11.

<sup>781</sup>UN SG Report on Aging, *supra* note 342, paras. 20, 21.

<sup>782</sup>Kelly Report, *supra* note 30, at 6.

<sup>783</sup>*The Rights of Older Persons in Asia*, International Federation on Ageing and HelpAge International (2009), available at <http://www.globalaging.org/elderrights/world/2009/humanrightsasiasia.pdf>. (last visited Oct. 23, 2014).

<sup>784</sup>*Id.*, at 12.



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