



Older Persons Access to Justice and Remedies



Violence, Abuse and Neglect

- ❖ Eight years after the launch of the WEAAD, we still do not know the full extent of the problem. Approximately 1 in 10 older persons experience abuse every month (WHO).
- ❖ Abuse against older persons take different forms -- physical, psychological, financial, as well as neglect -- across different social, economic, political and cultural contexts.
- ❖ And the most serious abuse - physical and sexual - tends to be the least frequently reported by victims or service systems.
- ❖ Elder abuse has a gender face.
- ❖ Elder abuse often remain hidden within families.



What are the international legal provisions to protect older persons?

- ❖ There is still no explicit prohibition of age discrimination, and explicit protection against violence, abuse and neglect in international human rights law,
- ❖ and no dedicated international protection regime for the human rights of older persons.
- ❖ Nonetheless, there is some protection against discrimination and violence under UN human rights treaties that applies to older persons:

CEDAW GA 27, CRPD (Article 15), CAT, OP-CAT



Challenges on access to Justice

- ❖ Invisibility of older persons in the justice system
- ❖ Lack of awareness of their legal rights and on existing legal mechanisms
- ❖ lack of availability of effective mechanisms
- ❖ Fear to report abuses –dependency on the abuser
- ❖ Shame and fear – particular on sexual offences
- ❖ Lack of legal aid – high cost of legal advice and representation



What are the international legal provisions to protect older persons access to justice?

Access to justice: *basic principle of the rule of law – guarantee for people to exercise their rights, hold perpetrators and decision-makers accountable.*

ICCPR (Arts 26, 16 and 17)

- ❖ All persons **are equal before the law** and are entitled without any discrimination to **equal protection** of the law
- ❖ Everyone shall have the right to **recognition everywhere as a person before the law**
- ❖ No one shall be subjected to **arbitrary or unlawful interference** with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation - Everyone has the **right to the protection** of the law against such interference or attacks.



What are the international legal provisions to protect older persons?

CRPD Article 13 - Access to justice

- ❖ States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, **including through the provision of procedural and age-appropriate accommodations**, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.



Regional human rights framework: Older persons access to justice

- ❖ **Preferential treatment for older persons** in processing, settlement of, and enforcement of decisions in administrative and legal proceedings. (IACROPs Art.31)
- ❖ **Public policies and programs** to promote: a. Alternative dispute settlement mechanisms; b. **Training in protection of the rights of older persons** for personnel associated with the administration of justice. (IACROPs Art.31)
- ❖ Training of law enforcement organs at all levels to **effectively interpret and enforce** policies and legislation to protect the rights of Older Persons (Protocol African Charter – Art. 4)
- ❖ **Legal assistance** for Older Persons (Protocol African Charter
- ❖ Expedited Judicial action **where the health or life of the older person may be at risk.** (IACROPs Art.31)



Regional human rights framework

- The ECrtHR has given consideration to the relevance of the **advanced age of a person** in considering whether a case is heard “**within a reasonable time**” under Article 6(1) of the ECHR and the right to a fair trial.
- In these cases the Court established that the administrative and judicial authorities are obliged to act with “**exceptional diligence**” in light of the **applicant’s age and state of health**.



Regional human rights framework

(...) the Court emphasizes the importance of fully recognizing **older persons as right-holders with special protection** and comprehensive care, with respect for their autonomy and independence. The Court has held that, at least, older persons "must have their health protected in case of chronic and terminal illnesses". Therefore, this Court considers that, with respect to older persons, as a group in a vulnerable situation, **there is a reinforced obligation of respect and guarantee of their right to health.** (*CIDH - Case Poblete Vilches y otros vs. Chile – Sentencia de 8 de marzo de 2018*)



The way forward



- ❖ Despite this, the **international legal framework** on the human rights of older persons **remains fragmented and incomplete**, with evident gaps for protection.
- ❖ Adoption of **international, universally applicable standards** to protect the rights of older persons, including:
 - ❖ a **comprehensive definition** of older persons access to justice
 - ❖ stipulate the obligation of States to a) **adopt legislation and policies** to guarantee and effective access to justice for older persons; b) provide **adequate support and remedies**





Many thanks!

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