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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Rights of persons with disabilities**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, submitted in accordance with Human Rights Council resolution 35/6.

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\* [A/74/50](#).



## **Report of the Special Rapporteur on the rights of persons with disabilities**

### *Summary*

In the present report, the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, examines the situation of older persons with disabilities, and provides guidance to States on how to promote, protect and ensure their human rights and fundamental freedoms, paying particular attention to the intersection between ageing and disability.

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## I. Introduction

1. The present report underscores the various challenges faced by older persons with disabilities in the enjoyment of their human rights and fundamental freedoms on an equal basis with others, and provides guidance to States on how to implement their existing obligations towards older persons with disabilities in a rights-based manner, paying particular attention to the intersection between ageing and disability. The international human rights standards presented in the report build on previous recommendations by the United Nations human rights mechanisms, including treaty bodies and special procedures.

2. In preparing her report, the Special Rapporteur analysed 96 responses to a questionnaire sent to Member States, national human rights institutions and civil society organizations, including organizations of persons with disabilities.<sup>1</sup> In 2017, she also organized, together with the Independent Expert on the enjoyment of all human rights by older persons, an expert consultation with representatives of United Nations agencies, organizations of persons with disabilities, organizations of older persons and academics in New York.

## II. The intersection between ageing and disability

3. The world's population is ageing. The population aged 60 years or above is growing at a rate of about 3 per cent per year.<sup>2</sup> The proportion of people over the age of 60 years is expected to increase from 12 per cent in 2015 to 21 per cent by 2050.<sup>3</sup> This phenomenon is not exclusive to high-income countries; almost every country in the world is experiencing growth in the proportion of older persons in the population. In fact, population ageing in low-income countries occurs at a much faster pace than in medium- to high-income countries. Women tend to live longer than men and are therefore overrepresented in the older population in general and especially among those aged 80 years or above.<sup>4</sup>

4. A longer lifespan is associated with an increased prevalence of chronic diseases and physical and cognitive impairments, which in interaction with various barriers may result in disabilities. In addition, thanks to technological and medical advancements, as well as socioeconomic developments, many persons with disabilities live longer. As a result, more than 46 per cent of older persons worldwide have an impairment (250 million experience moderate to severe impairments), and older persons represent the majority of the overall population of persons with disabilities.<sup>5</sup> Given that the number of persons over the age of 80 years is expected to more than triple by 2050, the correlation between the ageing population and increased rates of disability is very clear.

5. The ageing of the world's populations has brought increased attention to the rights of older persons and led to the growth of the older persons' market, which in turn has had a positive impact on the disability agenda. For example, the consumer demand from older persons has resulted in an increase in the availability and

<sup>1</sup> See [www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/SupportingTheAutonomyOlderPersons.aspx](http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/SupportingTheAutonomyOlderPersons.aspx).

<sup>2</sup> United Nations, Department of Economic and Social Affairs, *World Population Prospects: The 2017 Revision, Key Findings and Advance Tables*, Working Paper No. ESA/P/WP/248 (2017).

<sup>3</sup> *Promoting Inclusion through Social Protection: Report on the World Social Situation 2018* (United Nations publication, Sales No. E.17.IV.2), p. 47.

<sup>4</sup> *Ibid.*, p. 48.

<sup>5</sup> *Ibid.*; and Mark Priestley and Parvaneh Rabiee, "Same difference? Older people's organisations and disability issues", *Disability & Society*, vol. 17, No. 6 (2002), pp. 597–611.

affordability of accessible services and products, as well as new developments in assistive devices and technologies, which in turn has contributed to normalizing their use. The mainstreaming of the older persons' agenda has also shed light on issues still considered taboo for persons with disabilities, such as sexuality and incontinence, contributing to reduced misconceptions and stigma about those issues.

6. The age at which people experience disability influences their sense of identity as well as societal perceptions of them. Those who acquire impairments when older seldom self-identify as persons with disabilities and are more likely to perceive the decline of their physical and cognitive functioning as a “normal” part of ageing. For people who acquired impairments earlier in life and have grown old, older age is a secondary identity; they may therefore have very different expectations about older age. These distinct individual experiences and perceptions are also reflected in the ways in which the disability and the ageing communities address the intersection between ageing and disability. Although both movements are beginning to have increased exchanges, in general they continue to address the situation of older persons with disabilities differently: while the disability rights community often does not adequately reflect the interests and challenges faced by older persons, the older persons' movement often fails to understand and apply the human rights-based approach to disability. Consequently, older persons with disabilities frequently fall through the cracks.

7. Although ageism and ableism share common roots and consequences, inequality in older age is not the mere result of ableist biases. Ageism – the stereotyping of, and prejudice and discrimination towards, older people and older age – is a distinct form of oppression that affects older persons, including older persons with disabilities. Older persons are often perceived as a burden, dependent, unproductive, undeserving or helpless.<sup>6</sup> While disability is increasingly understood as a social construct, inequalities due to old age are predominantly seen as “natural” or “inevitable”. Therefore, older persons with disabilities are discriminated against and disadvantaged not just because they have a disability, but also because of stereotypes about older people. While some of the barriers that persons with disabilities experience earlier in their lives remain the same or may be exacerbated by older age, those who acquire a disability later in life may be facing those barriers for the first time, and such barriers are also compounded by age-related barriers.<sup>7</sup>

8. The intersection between older age and disability results in both aggravated forms of discrimination and specific human rights violations against older persons with disabilities. Older persons with disabilities are subject to a greater extent to loss of power, denial of autonomy, marginalization and cultural devaluation. They are also more prone to social isolation, exclusion, poverty and abuse. In addition, the combined effect of ageism and ableism leads to gaps in human rights protection and age-biased interpretations of human rights standards. The fragmentation of policies for older persons and for persons with disabilities results in the invisibility in law and in practice of experiences of disability in later life. Moreover, since they are perceived as a “burden” or “less deserving”, older persons with disabilities are often given lower

<sup>6</sup> Ania Zbyszewska, “An intersectional approach to age discrimination in the European Union: bridging dignity and distribution”, in *Discrimination and Labour Law: Comparative and Conceptual Perspectives in the EU and Beyond*, Mia Ronnmar and Ann Numhauser-Henning, eds. (Kluwer, 2015), pp. 141–163.

<sup>7</sup> Age Reference Group on Equality and Human Rights, “Age and ... multiple discrimination and older people”, discussion paper, October 2005. Available at [www.ageuk.org.uk/Documents/en-GB/For-professionals/Research/Age%20and%20Multiple%20Discrimination%20\(2005\)\\_pro.pdf?dtrk=true](http://www.ageuk.org.uk/Documents/en-GB/For-professionals/Research/Age%20and%20Multiple%20Discrimination%20(2005)_pro.pdf?dtrk=true).

priority in policy and therefore receive services of a lower quality, especially when there is scarcity of resources.<sup>8</sup>

9. Older women with disabilities have consistently worse life prospects and outcomes than older women without disabilities and older men with disabilities.<sup>9</sup> Gender roles and expectations often push these women into economic dependency. As a result, older women with disabilities are considerably poorer; are likely to be subject to violence, abuse and neglect; and have higher chances of facing unmet needs and human rights violations. In addition, older women with disabilities are more likely to be institutionalized or incapacitated owing to the higher life expectancy of women compared with men.<sup>10</sup>

### III. The rights of older persons with disabilities in the international and regional human rights frameworks

10. The rights of older persons have not received the same attention and recognition in international human rights law as other groups, including persons with disabilities. While in principle, from a non-discriminatory perspective, the core human rights instruments apply equally to older persons, there is no explicit reference to the rights of older people or protection against age discrimination in any of the existing instruments, with the exception of the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the international legal framework is significantly underused to advance their human rights. While the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have issued general comments on the rights of older persons,<sup>11</sup> references to older people, including older persons with disabilities, in the concluding observations of human rights bodies and universal periodic review recommendations are particularly scarce.<sup>12</sup>

11. The United Nations has adopted non-binding instruments to advance the human rights of older persons, including the United Nations Principles for Older Persons of 1991 and the Madrid International Plan of Action on Ageing of 2002. The Plan brought visibility to older persons at the international level and emphasized their roles and contributions, in a departure from their portrayal as mere beneficiaries of welfare. The Plan consists of a series of recommendations to achieve socioeconomic objectives, includes references to human rights commitments, such as eliminating age discrimination, and specifically mentions older persons with disabilities. However, since it was not drafted or intended as a human rights instrument, it does not address important human rights concerns affecting older persons, including older persons with

<sup>8</sup> Robert Kane, Reinhard Priester and Dean Neumann, “Does disparity in the way disabled older adults are treated imply ageism?”, *Gerontologist*, vol. 47, No. 3 (June 2007), pp. 271–279.

<sup>9</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 27 (2010) on older women and the protection of their human rights.

<sup>10</sup> Vicki Freedman, Douglas A. Wolf and Brenda C. Spillman, “Disability-free life expectancy over 30 years: a growing female disadvantage in the US population”, *American Journal of Public Health*, vol. 106, No. 6 (June 2016), pp. 1079–1085; Elina Nihtilä and Pekka Martikainen, “Institutionalization of older adults after the death of a spouse”, *American Journal of Public Health*, vol. 98, No. 7 (July 2008), pp. 1228–1234; and Pekka Martikainen and others, “Gender, living arrangements, and social circumstances as determinants of entry into and exit from long-term institutional care at older ages: a 6-year follow-up study of older Finns”, *Gerontologist*, vol. 49, No. 1 (February 2009), pp. 34–45.

<sup>11</sup> Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995) on the economic, social and cultural rights of older persons; and Committee on the Elimination of Discrimination against Women, general recommendation No. 27.

<sup>12</sup> See [www.upr-info.org/database/statistics/](http://www.upr-info.org/database/statistics/).

disabilities, such as institutionalization, denial of legal capacity and involuntary treatment.

12. Unlike human rights treaties preceding it, the Convention on the Rights of Persons with Disabilities includes several references to age and older persons. The difficult conditions faced by persons with disabilities owing to multiple and aggravated forms of discrimination, including on the basis of age, are recognized in the preamble; the obligation to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on age, is set out in article 8 (Awareness-raising); the provision of age-appropriate accommodations is referred to in article 13 (Access to justice); the importance of age-sensitive assistance and age-sensitive protection services is recognized in article 16 (Freedom from exploitation, violence and abuse); older persons are referred to explicitly in relation to health services to minimize and prevent further impairments in article 25 (Health); and States are called upon to ensure access by older persons with disabilities to social protection programmes and poverty reduction programmes in article 28 (Adequate standard of living and social protection). Nevertheless, while women and children with disabilities have their own stand-alone articles, the Convention does not single out the challenges at the intersection between ageing and disability.

13. The Committee on the Rights of Persons with Disabilities has considered issues relating to older age in its general comments and concluding observations to States parties. For example, it has clarified that older age is a potential ground for multiple and intersecting forms of discrimination and, in its general comment No. 6 (2018) on equality and non-discrimination, further recommended that States adopt specific measures for older persons with disabilities. The Committee also recognized the obligation of States to consult with groups at risk of intersecting forms of discrimination, including older persons, in its general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention. These provisions and their interpretation make the Convention a unique entry point for dealing with the intersection between ageing and disability from a rights-based perspective. Older persons with disabilities who encounter barriers to the exercise of their rights owing to disability or age can seek protection under the Convention, regardless of whether they acquired a disability early or later in life. Furthermore, older persons who are perceived as having a disability are also protected by the Convention.

14. The Convention on the Rights of Persons with Disabilities represents an opportunity to strengthen a rights-based approach to ageing. While no one questions the fact that older persons are rights-holders, the lack of an international human rights framework in relation to older persons has curtailed the development of a human rights-based approach and discourse on ageing. Medical definitions and approaches continue to dominate international discussions on ageing, and older persons are still largely perceived as mere beneficiaries of care and welfare. Furthermore, the economic cost of the ageing population appears to be the main consideration of States in their policies vis-à-vis older persons (public spending on pensions, health care and long-term care, among others), rather than the human rights concerns of older persons. As a result, many ageing-related interventions continue to rely heavily on financial considerations and on the medical model, affecting older persons with disabilities in particular, whereas, thanks to the Convention, disability-related efforts are increasingly being redirected towards promoting autonomy, independence and full participation.

15. At the regional level, the Inter-American Convention on Protecting the Human Rights of Older Persons, adopted in 2015, represents the world's first binding instrument on the rights of older persons. The Inter-American Convention draws

greatly from the Convention on the Rights of Persons with Disabilities, in particular in relation to the rights to legal capacity and independent living. Although the initial drafts of the Inter-American Convention contained inconsistencies with the Convention on the Rights of Persons with Disabilities, the intervention of organizations of persons with disabilities helped to address discrepancies and endorse a higher level of protection of rights.<sup>13</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted in 2018, includes an article on the rights of older persons with disabilities. Regrettably, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, adopted in 2016, contains standards that offer less protection than and contradict the Convention on the Rights of Persons with Disabilities. Similarly, the Recommendation of the Council of Europe on the promotion of human rights of older persons, adopted in 2014, despite recalling the provisions relevant to older persons in the Convention on the Rights of Persons with Disabilities, falls short in upholding all the standards of the Convention. The Special Rapporteur wishes to reiterate that, in the event of any inconsistency between the Convention and other international or regional standards for the protection of older persons, the provisions that are more conducive to the realization of the rights of older persons with disabilities should prevail.

16. The Open-ended Working Group on Ageing was established in 2010 by the General Assembly to consider the existing international framework on the human rights of older persons and to identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures. After 10 sessions of the Working Group, there seems to be general agreement that there are significant gaps in the protection of the rights of older persons in existing instruments. Against this background, given the synergies between ageing and disability, the Convention on the Rights of Persons with Disabilities should be considered as a minimum floor for any standard-setting on the rights of older persons so that there is no setback with respect to advances in international human rights law. Any new legally binding international tools on the rights of older persons should pay attention to the gaps and inconsistencies in the international framework that disadvantage older persons with disabilities.

17. The adoption of the Sustainable Development Goals also represents an opportunity to advance the rights of older persons with disabilities. While the Millennium Development Goals made no reference to persons with disabilities or older persons, thus contributing to their marginalization by widening the development gap between them and others, the 2030 Agenda for Sustainable Development includes several references to both groups. The Sustainable Development Goals contain a call for concrete measures to leave no one behind and a commitment to reach the furthest behind first, which typically includes those subject to cumulative discrimination on the basis of their multiple and intersecting identities, such as older persons with disabilities. However, the reference to "premature mortality" in target 3.4 of Goal 3 of the Sustainable Development Goals is of concern, as it may result in older persons being excluded from efforts to reduce mortality from non-communicable diseases.<sup>14</sup> The Convention on the Rights of Persons with Disabilities offers normative guidance

<sup>13</sup> Francisco Bariffi and Francesco Seatzu, "La convención de la OEA sobre los derechos de las personas mayores y la ratificación del modelo de toma de decisiones con apoyos", *Revista Latinoamericana en Discapacidad, Sociedad y Derechos Humanos*, vol. 3, No. 1 (2019), pp. 89–119.

<sup>14</sup> Nena Georgantzi, "The challenges in implementing and monitoring the Agenda 2030 and SDGs 3 and 10 from an old age perspective", in *Falling through the Cracks: Exposing Inequalities in the EU and Beyond*, Sylvia Beales, George Gelber and Tanja Gohlert, eds. (2019), p. 86.

for the implementation of a human rights-based approach to achieve sustainable development for older persons with disabilities.

## IV. The situation of older persons with disabilities

18. The Special Rapporteur has identified several human rights challenges affecting older persons with disabilities, including stigma and stereotypes; direct and indirect discrimination; denial of autonomy and legal capacity; institutionalization and lack of community support; violence and abuse; and lack of adequate social protection. While acknowledging some differences in the way in which the human rights concerns affecting both persons with disabilities and older persons are framed, the Special Rapporteur has used the normative framework of the Convention on the Rights of Persons with Disabilities and considered it from an ageing perspective for the analysis in the present report. The challenges addressed in the present section reflect neither all the human rights issues affecting older persons with disabilities, nor all the contributions received for the elaboration of the report.

### A. Stigma and stereotypes

19. Stigma and stereotypes represent a major concern affecting older persons with disabilities. Both ableism and ageism are deeply rooted in popular thinking, policies, laws, institutions, attitudes and beliefs. Older persons with disabilities experience unique human rights violations owing to the intersection of these forms of discrimination. As impairments among older persons are often seen as a natural aspect of ageing, the barriers to participation that they experience are perceived not as a social construct, but as a normal fact of life. Therefore, efforts are not focused on eliminating barriers or generating options to promote participation, but rather are framed mainly under a medical lens. Furthermore, low expectations regarding ageing with a disability lead to the assumption that it is not worthwhile to support the participation of older persons with disabilities. As a result, differential treatment on the basis of disability and age is not only widespread but also considered necessary and unproblematic, leading to the normalization of practices that would be considered unacceptable for other groups, such as younger persons with disabilities.

20. Older persons and persons with disabilities themselves are not free from ableist and ageist self-perceptions. The stigma around disability is so strong that it can prevent older persons from seeking medical treatment and support or from using mobility aids and assistive devices. Furthermore, people who acquire an impairment at an older age can experience feelings of abandonment and despair, making them prone to socially isolate themselves. Conversely, ageism within the disability community has limited the attention paid to older persons with disabilities within the sector.<sup>15</sup> While the disability movement has been very vocal in advocating the equal treatment of children, young people and adults of working age with disabilities, it has historically overlooked ageing-related considerations.<sup>16</sup> This approach has contributed to rendering the older-age perspective invisible and, to some extent, to legitimizing discriminatory practices against older persons with disabilities. While there is an increasing understanding of the need to develop positive measures to support children and adults with disabilities in actively participating in society, older

<sup>15</sup> Mark Priestley, "Adults only: disability, social policy and the life course", *Journal of Social Policy*, vol. 29, No. 3 (July 2000), pp. 421–439.

<sup>16</sup> Håkan Jönson and Annika Larsson, "The exclusion of older people in disability activism and policies – a case of inadvertent ageism?", *Journal of Aging Studies*, vol. 23, No. 1 (January 2009), pp. 69–77.

persons with disabilities are still seen as frail and dependent, in need only of protection and care.

21. Stigma and stereotypes about cognitive impairments such as dementia are particularly pervasive. Several studies have shown that negative perceptions and attitudes towards persons with dementia are prevalent across service providers and the general population.<sup>17</sup> Such ageist perceptions and attitudes regularly preclude the provision of full and equal access to universal health care for older persons with dementia. Little attention is paid to persons with early onset dementia who experience ageism, owing to the common misperception that dementia is only an older persons' condition. Fear of labelling and discrimination on the basis of a dementia diagnosis is also common given the limited knowledge about dementia among health-care professionals, poor diagnostic tools, assumptions that "nothing can be done", drug treatments of dubious effectiveness and the coercive practices routinely targeting this group.

22. The intersection between ableism and ageism also contributes to rendering older persons with disabilities invisible. There is little information relating specifically to the needs of people who are ageing with a disability. Autistic people and persons with intellectual disabilities are particularly invisible, as most people still think of them only as children. In addition, the tendency to portray older persons as a unified group (such as those older than 60 years) entails the risk of ignoring their great diversity and lumping together people of diverse ages, with diverse needs and expectations.<sup>18</sup> Age- and disability-disaggregated data, which are instrumental to gathering evidence of the inequalities and discrimination faced by older persons with disabilities in various areas of life, are scarce. Under these circumstances, human rights violations against older persons with disabilities are often neither monitored nor categorized as such.

23. While discussions about "active ageing" represent an opportunity for better health and participation in older age, they may inadvertently reinforce ageism and ableism for older persons with disabilities, given the limited conceptualization of what "active" might mean to older persons with high support needs, as well as the failure to address the full range of support needed to enable older persons with disabilities to be active in the way they wish. This is also reinforced by "active ageing" policies in which the idea of being active is reduced to being a working citizen.

## **B. Equality and non-discrimination**

24. Discrimination on the basis of age is both a human rights violation and a root cause of many abuses affecting older persons with disabilities. As the international human rights framework does not systematically refer to age as a ground of discrimination, there is a protection gap reflected in the failure of many national anti-discrimination laws to specifically address age-related discrimination. As a result, differential treatment on the basis of age is often considered permissible, and older persons, including those with disabilities, therefore do not enjoy the same rights on an equal basis with their younger peers. Discriminatory provisions, such as mandatory retirement age and age limits on access to health care, education, social protection and financial services, are frequently considered legitimate.

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<sup>17</sup> John Macnicol, *Age Discrimination: An Historical and Contemporary Analysis* (Cambridge, United Kingdom, Cambridge University Press, 2006), p. 308.

<sup>18</sup> *Ibid.*

25. In many countries, older persons who acquire a disability later in life are excluded from benefiting from disability programmes. For example, people over the age of 70 years are often ineligible for disability-related grants (e.g. to buy an adapted vehicle). This is problematic, as disability programmes tend to promote more social inclusion and participation than older persons' programmes, which rely heavily on the medical model. Furthermore, owing to lower expectations about the potential for maintaining or improving functioning in older age, older persons with disabilities are routinely offered fewer rehabilitation services, when, on the contrary, such services are fundamental to promoting well-being, as they maintain or slow declines in health and functioning. For example, in many countries, persons with dementia are offered no rehabilitation services, nor is the condition yet seen or managed by health-care professionals as a condition leading to disability.

26. A drawback related to the lack of a prohibition of discrimination on the basis of age is that policymakers may disregard the need to adopt positive measures in relation to the rights of older persons with disabilities. As age is in general not explicitly considered a prohibited ground of discrimination, the obligation of States to reduce the structural disadvantages associated with older age and/or to ensure positive measures to achieve de facto equality of older persons is often overlooked.<sup>19</sup> Moreover, in many countries there is no obligation to provide reasonable accommodation to this group, and those who acquire a disability may not be aware of the obligation to provide reasonable accommodation to persons with disabilities. Therefore, as long as older persons do not recognize themselves as persons with disabilities, they may not benefit from the equality measures established in the Convention on the Rights of Persons with Disabilities.

27. Older persons with disabilities are a heterogeneous group covering a wide range of impairments and identity traits, such as race, colour, sex, sexual orientation, gender identity, language, religion and national, ethnic, indigenous or social origin. The interplay of these traits produces further intersecting and multiple forms of discrimination. For example, socioeconomic disparities among older persons with disabilities may lead to the unequal access of older minority populations to home and community-based alternatives, affecting some minority groups more than others.<sup>20</sup>

28. In the context of humanitarian emergencies, older persons with disabilities may be at greater risk during conflicts or natural disasters; more likely to miss out on humanitarian aid distribution owing to physical and institutional barriers; disproportionately affected by barriers to access to health and rehabilitation services; and left out in decision-making processes about humanitarian action or issues affecting their lives.<sup>21</sup>

### C. Autonomy and legal capacity

29. Given the intersection between disability and age, older persons with disabilities experience an increased risk of limitations on their right to autonomy and on the exercise of their legal capacity. Grounds for the denial of legal capacity are not limited to the existence or perception of an impairment but include other factors such as

<sup>19</sup> Office of the United Nations High Commissioner for Human Rights, "Normative standards in international human rights law in relation to older persons", analytical outcome paper, 2012, pp. 9–11.

<sup>20</sup> Zhanlian Feng and others, "Growth of racial and ethnic minorities in US nursing homes driven by demographics and possible disparities in options", *Health Affairs*, vol. 30, No. 7 (July 2011), pp. 1358–1365.

<sup>21</sup> Phillip Sheppard and Sarah Polack, *Missing Millions: How Older People with Disabilities are Excluded from Humanitarian Response* (London, HelpAge International, 2018).

negative perceptions (e.g. being perceived as “frail and senile”), loss of income and family abandonment. As a result, older persons with disabilities are more likely to be subject to guardianship, institutionalization, home confinement and involuntary treatment than those without disabilities. Persons with dementia in particular have been assumed to possess weak or even no agency. The diagnosis of Alzheimer’s disease or dementia alone is often the justification for the denial of the exercise of rights such as the right to marry or to make a will. Persons with psychosocial disabilities continue to be exposed to forced treatment as they age, with increased vulnerability to guardianship and permanent institutionalization and with less access to alternative mental health services or to social support under the independent living model.

30. Even when there is no substitute decision-making regime in place, in practice many older persons with disabilities are de facto deprived of their legal capacity. For example, they are often restricted from making autonomous decisions without the consent of their family members, or their informed consent is not sought for medical treatment and social care, including palliative care and end-of-life decisions. The will and preferences of older persons with disabilities regarding daily living arrangements, such as what to eat, what to wear, what time to go to bed or even whether and when to use the bathroom, are sometimes completely disregarded. Older women with disabilities face particular challenges in relation to their legal capacity. They may not have the right to inherit and administer marital property upon the death of their spouse, or their legal capacity is deferred by law or de facto to lawyers or family members without their consent.<sup>22</sup>

31. The principle of universal legal capacity is set out in article 12 of the Convention of the Rights of Persons with Disabilities, which protects equality before the law for all persons with a perceived or actual disability, regardless of age. Having high support needs cannot justify the denial of autonomy and legal capacity. Loss of autonomy is not a natural process, but a social process that results from the failure of society to respect and support the will and preferences of all people. Older persons with disabilities have the right to maintain their legal capacity and to have access to supported decision-making, and their agency needs to be recognized and facilitated. Furthermore, all health and social care services should be based on the free and informed consent of the individual concerned, and all laws that allow involuntary treatment or placement in residential care upon the authorization of third parties, such as family members, or on the basis of an actual or perceived mental health condition or other impairment, should be repealed (see [A/HRC/37/56](#)).

#### **D. Independent living and community support**

32. Older persons with disabilities are often denied the right to live independently and be included in the community. While younger persons with disabilities are increasingly encouraged and provided with support to live independently, in many countries older persons with disabilities are regularly coerced to reside in long-term care facilities, including nursing homes and care homes. Many of these facilities are in fact segregated institutions, where staff exercise control over the person’s daily life and make decisions about the person’s care, including their placement in segregated locked wards, the administration of chemical restraints such as psychotropic drugs and the use of other physical restraints. Of particular concern is the emergence of dementia villages in developed countries, which represent a systemic form of disability-based segregation and isolation.

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<sup>22</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 27, para. 27.

33. At the root of the segregation of older persons with disabilities in institutions lies the lack of quality support services within the community. In general, older persons with disabilities have less access to community support and enjoy services of a lower quality than their younger peers with disabilities or older persons without disabilities. For example, many countries have established age limits on access to personal assistance and home support for persons with disabilities. As service models targeting both older persons and persons with disabilities are often distinct, persons who acquire an impairment later in life have fewer options to exercise autonomy and are more likely to receive rudimentary support in the community.

34. The lack of support also leads to an overreliance on informal forms of support for older persons with disabilities, primarily from their families and personal networks.<sup>23</sup> Within families, women with and without disabilities are the predominant providers of informal support for older persons with disabilities, which is routinely provided without any support or respite services, training or financial assistance. This precarious situation may result in an increased risk of older persons with disabilities being isolated and dependent on the schedules and preferences of their caregivers, which may entail their being forced to move to another city or country; the denial of autonomy over decisions about different aspects of life; enforced routines; deprivation of liberty in the home; and exposure to abuse and neglect. All these practices prevent older persons with disabilities from living independently and within the community, even if they live at home and in their own community.

35. The right of all persons with disabilities, regardless of age and impairment, to live independently and be included in the community is recognized in article 19 of the Convention of the Rights of Persons with Disabilities. This right includes the right to choose where, how and with whom to live; access to a range of community support services, including personal assistance, in-home support and residential services; and access to general community services and facilities that are inclusive of and accessible by persons with disabilities. While standards for older persons continue to extensively use the concept of “long-term care”, the Convention has moved away from the notion of care to develop a paradigm of support (see [A/HRC/34/58](#)). This terminological difference reflects the criticism of service models of care by the disability community for being paternalistic, reflecting the medical model and promoting the segregation, restraint and disempowerment of persons with disabilities.

## E. Freedom from violence and abuse

36. Older persons with disabilities face significant risks of violence, abuse and neglect. Several studies have shown that physical, cognitive and mental impairments are a strong risk factor for elder abuse.<sup>24</sup> For example, in a study, it was found that older persons with Alzheimer’s disease or other forms of dementia were 4.8 times more likely to experience elder abuse than those without these conditions.<sup>25</sup> These abuses occur both in the community and in institutionalized settings, including hospitals, nursing homes and other residential settings, and include physical, psychological and sexual abuse, caregiver neglect and financial exploitation. According to the World Health Organization, 90 per cent of all abusers in community

<sup>23</sup> Titti Mattsson, “Age, vulnerability and disability”, in *Ageing, Ageism and the Law: European Perspectives on the Rights of Older Persons*, Israel Doron and Nena Georgantzi, eds. (Cheltenham, Edward Elgar Publishing, 2018), pp. 37–49.

<sup>24</sup> World Health Organization, “Risk factors for elder abuse”, Violence Info. Available at <http://apps.who.int/violence-info/studies/?area=elder-abuse&aspect=risk-factors&risk-factor-level=Individual&risk-factor-sub-levels=Victim>.

<sup>25</sup> Xin Qi Dong, “Elder abuse: systematic review and implications for practice”, *Journal of the American Geriatrics Society*, vol. 63, No. 6 (June 2015), pp. 1214–1238.

settings are family members, including children, spouses and partners.<sup>26</sup> The risk of mortality from abuse and neglect seems to be higher in older adults with greater levels of cognitive impairments.<sup>27</sup>

37. In long-term care settings, in which older persons with disabilities represent a significant proportion of the residents, elder abuse is a critical issue. Numerous reports and studies have shown high rates of elder abuse in institutions, which are likely to be underestimated owing to the lack of proper detection and/or reporting.<sup>28</sup> Persons with dementia are particularly at risk owing to their high support needs and communication difficulties. They, along with persons diagnosed with mental health conditions, are often administered neuroleptics and other psychotropic drugs as a form of chemical restraint or in the guise of therapeutic “treatment” against their will.<sup>29</sup> Furthermore, residents of nursing homes and assisted living facilities are often poorly informed of existing adult protective services and remain uncertain about options when care is not optimal. Older women with disabilities who are survivors of sexual violence face particular barriers to disclosure and access to justice, resulting in their experiences remaining hidden.<sup>30</sup> When they do report abuse, older women, in particular those with cognitive disabilities, may be viewed as poor witnesses owing to memory problems.

38. Under article 16 of the Convention of the Rights of Persons with Disabilities, States parties are required to take all appropriate measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects. This includes the provision of appropriate gender- and age-sensitive support for persons with disabilities and their families and caregivers; effective monitoring of all facilities and programmes designed to serve persons with disabilities; and appropriate measures to promote the recovery, rehabilitation and social reintegration of survivors. All these standards apply to older persons with disabilities regardless of whether they live at home or in a residential setting.

## F. Social protection

39. Older persons with disabilities are at significant risk of living in poverty. Owing to mandatory retirement ages, many older persons with disabilities do not have the right to continue working even if they wish to do so. This is not only an arbitrary restriction on the right to work, but it may also lead to loss of income and affect the ability of older persons to lead autonomous lives. In addition, older persons with disabilities incur a range of disability-related extra costs that their peers without disabilities do not have. Some of these costs are for disability-related goods and services (e.g. mobility aids, assistive devices and personal assistance), while many

<sup>26</sup> World Health Organization, “Elder abuse: the health sector role in prevention and response”, 2016.

<sup>27</sup> Xin Qi Dong, Ruijia Chen and Melissa A. Simon, “Elder abuse and dementia: a review of the research and health policy”, *Health Affairs*, vol. 33, No. 4 (April 2014), pp. 642–649.

<sup>28</sup> Elizabeth Bloemen and others, “Trends in reporting of abuse and neglect to long term care ombudsmen: data from the national ombudsman reporting system from 2006 to 2013”, *Geriatric Nursing*, vol. 36, No. 4 (July–August 2015), pp. 281–283; and Britt-Inger Saveman and others, “Elder abuse in residential settings in Sweden”, *Journal of Elder Abuse & Neglect*, vol. 10, Nos. 1–2 (1999), pp. 43–60.

<sup>29</sup> Human Rights Watch, “*They Want Docile*”: *How Nursing Homes in the United States Overmedicate People with Dementia* (United States, Human Rights Watch, 2018).

<sup>30</sup> Bianca Fileborn, “Sexual assault and justice for older women: a critical review of the literature”, *Trauma, Violence, & Abuse*, vol. 18, No. 5 (December 2017), pp. 496–507.

others are the result of the lack of accessibility (e.g. transportation) or discrimination (e.g. medical insurance).

40. Older persons with disabilities are often excluded from receiving disability services or benefits, including disability pensions and mobility allowances, on the assumption that retirement pensions represent an income replacement for those who can no longer work owing to disability. However, persons with disabilities have considerably fewer opportunities to contribute to contributory schemes than persons without disabilities, owing to their higher unemployment rates, economic inactivity and informal employment. Therefore, those ageing with a disability have fewer chances of receiving a pension. Moreover, there are considerable discrepancies in terms of access to pensions, with more than 95 per cent of people above retirement age receiving a pension in high-income regions, compared with only 26 per cent in Central and Southern Asia and 23 per cent in sub-Saharan Africa.<sup>31</sup>

41. While many countries have implemented non-contributory pensions to guarantee at least basic income security in old age, they are frequently of a lower amount than contributory pensions. Older persons with disabilities are therefore less likely to have adequate resources to pay for their disability-related needs. Persons with disabilities who experience an early onset of conditions associated with ageing, such as persons with Down syndrome, may be in need of early retirement. However, in many countries, they may not qualify for early retirement or the resulting pension will be significantly lower than the average. Older women with disabilities face additional difficulties in obtaining access to appropriate social protection, as on average they are less likely to work and have a higher life expectancy than men.

42. Older persons with disabilities often experience discrimination in the enjoyment of services and benefits. For example, because they are seen as incapable or unwilling to adopt and adapt to new technologies, they may not be offered equal access to assistive technologies. In addition, because ill health is seen as a symptom of older age instead of as a medical condition that merits treatment, older persons with disabilities are regularly excluded from medical interventions, including preventive screening, surgical treatment and organ transplantation. Similarly, they are less likely to benefit from initiatives aiming to harness their potential, such as training. Furthermore, where disability certification is a prerequisite for access to benefits or services, older persons with disabilities are often excluded, as their functional limitations are considered to be a natural aspect of ageing. This may result in the Convention on the Rights of Persons with Disabilities not being applied to older persons with disabilities in practice.

43. When adequately designed and implemented, social protection systems can play a significant role in ensuring income security and access to essential services, including health and support, for older persons with disabilities (see [A/70/297](#)). According to article 28 of the Convention on the Rights of Persons with Disabilities, States parties must recognize the right to social protection of persons with disabilities without discrimination and take appropriate steps to safeguard and promote its realization. Such protection includes access to mainstream social protection programmes and services – including basic services, poverty reduction programmes, housing programmes and retirement benefits and programmes – as well as access to specific programmes and services for disability-related needs and expenses. Moreover, social protection for older persons with disabilities needs to promote active citizenship, social inclusion and community participation, rather than paternalism, dependence and segregation. The failure to offer financial support, such as disability

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<sup>31</sup> *Promoting Inclusion through Social Protection: Report on the World Social Situation 2018*, p. 47.

benefits, to older persons with disabilities constitutes a form of discrimination on the basis of age and disability.

## **G. Palliative care**

44. Palliative care for the alleviation of pain and suffering has received little attention in the disability discourse. However, it has been a central issue in discussions on the rights of older persons. Evidence shows that people over the age of 85 years are less likely to have access to palliative care than younger individuals, with older persons with dementia being particularly at risk.<sup>32</sup> Discriminatory treatment is driven by ageist attitudes, which may lead to neglect, lack of support and services, and disregard of individual will and preferences. In addition, palliative care services are incorrectly associated with only end-of-life situations or specific conditions such as cancer, leaving older persons with chronic conditions largely uncovered.

45. The Convention on the Rights of Persons with Disabilities protects the right of older persons with disabilities to have access to palliative care on an equal basis with others. Discrimination in access to palliative care on the basis of disability is prohibited (art. 5). Moreover, States parties must provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes, including palliative health care, as provided to other persons (art. 25 (a)). Older persons with disabilities under contributory and non-contributory schemes should have access to palliative care. Owing to the interdisciplinary approach of palliative care, the obligation to provide those services can also be grounded in the right to live independently in the community (art. 19) and the right to have access to rehabilitation (art. 26). In this regard, palliative care must adhere to the principle of respect for an individual's will and preferences.

## **V. Fulfilling the rights of older persons with disabilities**

46. States can implement a number of measures to improve the rights of older persons with disabilities, including reviewing their legal and policy frameworks; taking concrete measures in the areas of support, accessibility, non-discrimination, access to justice and participation; and mobilizing resources for their implementation.

### **A. Legal and policy frameworks**

47. States must establish legal and policy frameworks that ensure and promote the full realization of all human rights for all older persons with disabilities. For that purpose, States must adopt a human rights-based approach in all legislation and policies and move away from medical and charity approaches to disability and ageing. In addition, States have an obligation to immediately repeal all legislation that allows the denial of legal capacity, deprivation of liberty, institutionalization and involuntary treatment of older persons with disabilities on the basis of disability and/or age.

48. States must mainstream the rights of older persons with disabilities into all their policies and programmes for both older persons and persons with disabilities. For example, the situation of older persons with disabilities is addressed in the national action plans on disability of Germany and Slovenia. National strategies and action

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<sup>32</sup> Lara Pivodic and others, "Palliative care service use in four European countries: a cross-national retrospective study via representative networks of general practitioners", *PLOS ONE*, vol. 8, No. 12 (December 2013).

plans on ageing and disability must complement each other and ensure that older persons with disabilities, regardless of their age or impairment, do not fall between the cracks. Older persons with psychosocial disabilities must be fully included in these policies and must not be left behind or addressed solely through mental health strategies that lack a rights-based approach to disability and may violate their human rights.

49. States must collect comparable disability- and age-disaggregated data to identify and address the barriers faced by older persons with disabilities in exercising their rights across various spheres of life. Disaggregated data is indispensable to assessing whether older persons with disabilities are being left behind in the implementation of the 2030 Agenda.

## **B. Non-discrimination**

50. States must prohibit all discrimination on the grounds of disability and age.<sup>33</sup> Any distinction, exclusion or restriction on the basis of disability or age, or relating to the intersection between the two grounds, that has the purpose or effect of restricting the rights of older persons with disabilities should be eliminated. For example, provisions excluding or restricting the access of older persons with disabilities to disability or age-related services and benefits or to any social protection programme on the basis of age and/or disability should be amended to facilitate universal and equitable access. States must also take all appropriate steps to ensure that reasonable accommodation is provided to older persons with disabilities.

51. States must guarantee to older persons with disabilities equal and effective legal protection against discrimination on all grounds, including intersecting and multiple forms of discrimination.<sup>34</sup> In Spain, the Constitutional Court has established that age cannot in itself be a condition for limiting access to disability-related support, which should be provided regardless of the age of the individual.<sup>35</sup> In addition, States must consider adopting specific measures to accelerate or achieve de facto equality of older persons with disabilities in order to increase their participation in different areas, such as education, employment, cultural life and political participation. In Colombia, the social entrepreneurship programme offers alternative income generation opportunities for persons with disabilities, including older persons with disabilities, who are part of the informal economy and work in the public space.

## **C. Community-based support**

52. States must ensure the effective access of older persons with disabilities to a wide range of community-based support services and arrangements, including personal assistance; support for decision-making; assisted living arrangements; mobility aids; assistive devices and technologies; palliative care; and community services. These support services must be available, accessible, affordable, acceptable and adaptable to all persons with disabilities regardless of age and impairment. When designing and implementing support services, States must ensure coherence and coordination across programmes, actors and levels of government responsible for the provision of support for both persons with disabilities and older persons. States must

<sup>33</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018) on equality and non-discrimination, para. 17.

<sup>34</sup> Ibid.

<sup>35</sup> Constitutional Court of Spain, Second Chamber, *A.R.S. v. the Community of Madrid*, Amparo Case No. 2699-2016, Judgment No. 3/2018, 22 January 2018, published in document BOE-A-2018-2459, 21 February 2018.

also guarantee the continuity of benefits and services when a person moves from one system to another.

53. Community-based support must enable choice and control by older persons with disabilities. Accordingly, all support services must be provided on a voluntary basis and respect the rights and dignity of older persons with disabilities. States must also guarantee to older persons with disabilities the opportunity to plan and direct their own support, including through advance planning and personalized approaches. In Chile, the domiciliary care programme provides support services for the realization of activities of daily living to older persons with disabilities who are socioeconomically vulnerable and do not have family support. In addition, support services must be culturally appropriate; sensitive to gender, impairment and age requirements; and designed to respect the privacy of those concerned. In Uruguay, older persons with disabilities can benefit from tele-assistance services, allowing them to activate a connection with a 24-hour care centre and to contact a family member, friend or neighbour in the event of need at home.

54. No older person with disabilities should be institutionalized for the purpose of care. States need to transform their institutional forms of care for older persons with disabilities and to provide support and services within the community. To that end, States should implement structural reforms to, inter alia, increase the provision of in-home and community support; improve accessibility within the community; provide adequate information and support services to family carers; and ensure access to disability-inclusive social protection systems. Long-term care and palliative services must respect the right of older persons with disabilities to live in the community, whether in the person's own home, the family home, shared housing or another residential living arrangement.

#### **D. Accessibility**

55. Accessibility is an important condition to build barrier-free, inclusive societies where older persons with disabilities can live independently and participate fully in all aspects of life. States have an obligation to ensure the accessibility of the physical environment, transportation, information and communications, including information technologies and systems, and other facilities and services open or provided to the public, be they public or private, in urban, remote and rural settings. The Committee on the Rights of Persons with Disabilities provided useful guidance on implementing accessibility obligations in its general comment No. 2 (2014) on accessibility.

56. Improving accessibility for older persons with disabilities is not only a human rights imperative but also a sine qua non for sustainable development. For example, improving their access to transportation will enable them to increase their mobility, thus facilitating their independence, reducing social isolation and increasing their physical activity.<sup>36</sup> Similarly, improved housing accessibility can help older persons with disabilities to maintain independence in activities of daily living, reducing the need for home services.<sup>37</sup> Visual and hearing losses<sup>37</sup> are particularly common among older persons; promoting assistive technologies, such as audio induction loop systems and audio description, is therefore important.

57. Universal design strategies should be prioritized to integrate accessible features into the overall design of buildings, services or products, in particular as many older

<sup>36</sup> Roger Mackett, "Improving accessibility for older people – investing in a valuable asset", *Journal of Transport & Health*, vol. 2, No. 1 (March 2015), pp. 5–13.

<sup>37</sup> Björn Slaug and others, "Improved housing accessibility for older people in Sweden and Germany: short-term costs and long-term gains", *International Journal of Environmental Research and Public Health*, vol. 14, No. 9 (September 2017).

persons with disabilities who may be unwilling to be categorized as “old” or “disabled” will be unlikely to make use of them otherwise. Simple things such as having better signage, lighting and flooring, accessible toilets and changing rooms, and sitting areas, can contribute to the autonomy and independent living of older persons with disabilities, notably those with dementia.<sup>38</sup> The shift to e-governance and service delivery exclusively or predominantly through information technology services can cause significant difficulties for older persons with disabilities who may need accessibility features but do not have the necessary information technology skills or equipment, nor opportunities to acquire them (see [A/HRC/41/39/Add.1](#), paras. 59–66).

## **E. Access to justice**

58. States must ensure effective access to justice for older persons with disabilities. Access to effective remedies is critical to combating all forms of exploitation, violence or abuse against older persons with disabilities in the public and private spheres. States must eliminate all restrictions preventing older persons with disabilities from obtaining access to justice, including denial of legal standing and accessibility barriers. States are required to provide age- and gender-appropriate procedural accommodations to facilitate the effective participation of older persons with disabilities in all legal proceedings.

59. In addition, States must take all appropriate legislative, administrative, social, educational and other measures to protect older persons with disabilities from all forms of exploitation, violence and abuse, including their gender-based aspects. States have an obligation to prevent and investigate all acts of violence and abuse and to prosecute and, when convicted, punish the perpetrators, as well as to protect the rights and interests of the victims and survivors. All protection services must be age-, gender- and disability-sensitive.

60. National preventive mechanisms, national human rights institutions and independent mechanisms for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities should be expressly mandated to carry out regular monitoring of residential facilities, to initiate inquiries and investigations into exploitation, violence or abuse against older persons with disabilities and to assist them in obtaining access to legal remedies. National human rights institutions should also have a clear mandate to protect the rights of older persons and persons with disabilities more generally, including to protect them from multiple and intersecting forms of discrimination.

## **F. Participation**

61. States must promote the participation of older persons with disabilities and their representative organizations in all decision-making processes related to the implementation of their rights. Owing to the intersection between older age and disability, older persons with disabilities have fewer opportunities to establish or join organizations that can represent their demands as older persons and persons with disabilities. States must take steps to eliminate the barriers that prevent their participation in public decision-making and ensure that all participatory and consultative mechanisms take into account both disability- and age-related factors and their intersection.

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<sup>38</sup> Althea Gordon and others, *Guidelines for the Development of Dementia-Friendly Communities* (Alzheimer’s Australia WA, 2016).

62. States should reach out directly to older persons with disabilities when they may be inadequately represented by existing representative organizations in a given country and support their capacities to self-organize and actively participate in decision-making processes. States should also establish outreach and flexible mechanisms to enable the effective participation of groups of older persons with disabilities historically discriminated against or disadvantaged, such as persons with intellectual disabilities, persons with psychosocial disabilities, persons with dementia, deafblind persons, indigenous people and lesbian, gay, bisexual, transgender and intersex persons.

### **G. Capacity-building and awareness-raising**

63. States must adopt immediate, effective and appropriate measures to raise awareness throughout society of older persons with disabilities from a rights-based perspective. Older persons with disabilities should not be seen as “ill” or as “patients”, but as rights-holders in the same way as other members of society. States should take measures to promote positive perceptions and greater social awareness of older persons with disabilities and to combat stigma, stereotypes and harmful practices against them, including harmful medical and legal practices. In Germany, the “New Images of Ageing” programme seeks to raise awareness through a travelling exhibition entitled “What’s old anyway?” and other materials showing how older persons with disabilities are perceived in society.

64. States must also foster respect for the rights and dignity of older persons with disabilities through awareness-raising among and the training of professionals and staff working with them. Family members and informal caregivers should be trained to improve the provision of assistance to older persons with disabilities from a rights-based perspective. Training should address the multiple and intersecting forms of discrimination that affect older persons with disabilities. The Ministry of Health of Croatia is providing training for formal and informal caregivers of persons who experience Alzheimer’s and other forms of dementia.

### **H. Resource mobilization**

65. States have an obligation to take immediate steps, making full use of their available resources, including those made available through international cooperation, to guarantee the rights of older persons with disabilities, including social protection and access to rights-based support. In many countries, services and programmes for both older persons and persons with disabilities, including home support services, are significantly underfunded. Consequently, many older persons with disabilities have no access at all to those services or, at most, depend on family members and informal caregivers. In this regard, States should formulate strategies and plans that include realistic, achievable and measurable indicators and time-bound targets, and are designed to assess advancements in the progressive realization of the economic, social and cultural rights of older persons with disabilities. Government planning and budgeting must incorporate the specific services needed by older persons with disabilities, as well as the particular needs of older persons with disabilities, across all budget lines. Participatory budgeting processes and earmarked funds can help to expand the allocation of public funds for older persons with disabilities.

66. The elimination of discrimination in the exercise of the right to social protection and access to rights-based support is an obligation of immediate effect. States cannot discriminate against older persons with disabilities just because of the unaffordability

of extending a measure to all persons with disabilities. Similarly, securing access to social protection and ensuring a minimum essential level of benefits and services for all older persons with disabilities and their families, including essential community-based support, assistive devices and technologies, constitute the core of nationally defined social protection floors, which are crucial to securing an adequate standard of living for older persons with disabilities that includes basic subsistence, essential primary health care, basic shelter and housing. States must meet these core obligations even if their resources are scarce. In India, the Ministry of Social Justice and Empowerment has introduced a scheme for providing assistive devices to older persons who experience vision, hearing and mobility impairments. Furthermore, States should not adopt retrogressive measures that affect the rights of older persons with disabilities and must refrain from funding practices contrary to the human rights-based approach to disability (e.g. institutionalization or coercive health interventions).

## I. International cooperation

67. International, South-South and triangular cooperation can play a crucial role in the implementation of the rights of older persons with disabilities. Donor countries and international organizations need to ensure that all international development efforts in the context of the 2030 Agenda are inclusive of and accessible by older persons with disabilities. International cooperation in the areas of ageing and disability must also be consistent with the rights-based approach to disability and provided in a sustainable and culturally appropriate manner. International organizations, non-profit organizations, charities and other organizations operating in national contexts should refrain from implementing projects that are not sustainable or that violate the rights of persons with disabilities, such as the creation of institutions for older persons with disabilities.

68. In the framework of the recently adopted United Nations Disability Inclusion Strategy, organizations of the United Nations system, including all its programmes, funds and specialized agencies, should increase the awareness and expertise of its staff on the rights and inclusion of older persons with disabilities to be able to cooperate more effectively with States, including through technical guidance, information-sharing and capacity-building. The United Nations should ensure a human rights-based approach to older persons with disabilities for the successful mainstreaming of a disability perspective into policies and programmes related to older persons and vice versa.

## VI. Conclusions and recommendations

**69. Older persons with disabilities encounter significant barriers to the exercise of their rights owing to the intersection between ableism and ageism. Such barriers include stigma and stereotypes; discriminatory laws and practices; denial of autonomy and legal capacity; institutionalization and lack of community support; violence and abuse; and lack of adequate social protection. Many of these human rights violations are frequently regarded as normal and rendered invisible to Governments, deepening the circle of discrimination and exclusion of older persons with disabilities.**

**70. The Convention on the Rights of Persons with Disabilities represents an opportunity to shed light on the multiple and intersecting forms of discrimination experienced by older persons with disabilities and to take action to ensure that older persons with disabilities enjoy all their human rights on equal basis with others. The effective application of a rights-based approach at**

the intersection between older age and disability needs to be accompanied by a paradigm shift with respect to society's perception of ageing and older persons. While impairment might be a normal aspect of ageing that should be embraced as part of human diversity, discrimination and social exclusion are not.

71. States have an international obligation to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all older persons with disabilities, including by reviewing their legal and policy frameworks; prohibiting discrimination on the basis of age and/or disability; ensuring access to rights-based community support; improving the accessibility of the physical environment, transportation and information and communications; guaranteeing access to justice; promoting participation in decision-making; fostering capacity-building and awareness-raising; and mobilizing resources for the implementation of these measures.

72. The Special Rapporteur makes the following recommendations to States with the aim of assisting them in realizing the rights of older persons with disabilities:

(a) Conduct a comprehensive review of laws with a view to abolishing or revoking all laws and regulations that directly or indirectly discriminate against older persons with disabilities;

(b) Prohibit by law all forms of discrimination on the grounds of disability and age, as well as on the basis of the intersection between both grounds, and guarantee to older persons with disabilities equal and effective legal protection against discrimination on all grounds;

(c) Mainstream the rights of older persons with disabilities into all disability and ageing-related policies and programmes in order to ensure that the concerns and needs of older persons with disabilities are adequately addressed;

(d) Ensure a human rights-based approach to disability and ageing in the design, implementation and evaluation of all disability- and ageing-related policies and programmes;

(e) Integrate a gender perspective into all disability and ageing-related policies and programmes, addressing the intersectionality of discrimination faced by older women with disabilities;

(f) Design comprehensive and inclusive social protection systems so that disability is mainstreamed into all programmes and interventions, and ensure access to specific programmes and services for older persons with disabilities;

(g) Design and implement support systems so that older persons with disabilities have access to rights- and community-based support and services that are available, accessible, adequate and affordable;

(h) Ensure that independent authorities effectively monitor all public and private facilities and programmes providing services to older persons with disabilities to prevent all forms of exploitation, violence and abuse;

(i) Guarantee access to justice and effective remedies for all older persons with disabilities, and ensure that adult protection services and programmes are inclusive of and accessible by older persons with disabilities;

(j) Adopt strategies to ensure the direct participation of older persons with disabilities in all processes of public decision-making that directly or indirectly concern them;

(k) **Implement awareness-raising programmes designed to combat stereotypes, prejudices and harmful practices against older persons with disabilities, and change the societal perceptions regarding disability and ageing;**

(l) **Collect comparable disability- and age-disaggregated data on the situation of older persons with disabilities to adequately monitor the implementation of the Sustainable Development Goals;**

(m) **Mobilize resources to increase the access of older persons with disabilities to support services and social protection, ensuring that all investments are inclusive of them.**

**73. The Special Rapporteur also recommends that the United Nations, including all its programmes, funds and specialized agencies, adequately consider the rights of older persons with disabilities from a rights-based perspective in all its work, including when assisting States in the implementation of mainstream policies and programmes. Treaty bodies should proactively request information on the situation of older persons with disabilities in order to improve monitoring of the enjoyment of their human rights.**

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