

**On the occasion of
International Day of Older Persons:
October 1, 2016**



Statement regarding the Comprehensive (final) Report by the Independent Expert on the Enjoyment of all Human Rights by Older Persons

In July 2016 Rosa Kornfeld-Matte (Chile), United Nations Independent Expert on the enjoyment of all human rights by older persons, submitted her comprehensive report to the UN Human Rights Council.¹ The chief mandate of the Independent Expert had been to assess the practical implementation of existing human rights instruments² with regard to older persons. At the same time, she was to identify examples of best practice as well as gaps in protection. Another key aspect of the mandate was to determine human rights implications of the implementation of the second International Plan of Action on Ageing (Madrid, 2002).

In her Report, the Independent Expert concludes that there were indications of good practices in implementation of current laws. However, on some issues, e.g. quality of care, palliative care, assistance for victims of violence and abuse, preservation of independence and autonomy, or the right to an adequate standard of living, little or no information was available. Each of those areas raised a series of issues and protection concerns that require thorough scrutiny. While the second International Plan of Action on Ageing contains a number of references to human rights, it is nevertheless not a human rights instrument, but examines aspects of ageing largely from a developmental perspective.

¹ The approximately 20-page Report can be found in English under: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/147/83/PDF/G1614783.pdf?OpenElement>

² Such as, in particular: the Universal Declaration of Human Rights (United Nations Charter of Human Rights); the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the UN Convention on Women's Rights; and the UN Convention on the Rights of Persons with Disabilities. For Europe, the European Convention on Human Rights (ECHR) with the European Court of Human Rights (ECHR) and the European Social Charter are most important; at the EU level, it is the Charter of Fundamental Rights of the European Union, which entered into force by reference in the Treaty of Lisbon. – A good overview of existing human rights instruments and mechanisms can be found in the online source made available by the "Older Persons' Self-Advocacy Handbook" of AGE Platform Europe (2015, with a foreword by Rosa Kornfeld-Matte): <http://publications.age-platform.eu>

The Independent Expert appealed to the States “to step up their efforts to determine the best way to strengthen the protection of the human rights of older persons and to consider the various proposals that have been made, notably the elaboration of a convention on the rights of older persons.” She also expressed the hope that a Working Group established at UN level “will in due course present (...) a proposal containing, inter alia, the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons.”

In the creation of her mandate, the Independent Expert saw “a paradigm shift from a predominant economic and development perspective to ageing to the imperative of a human rights-based approach [...] that views older persons as subjects of law, rather than simply beneficiaries.”

In 2012 already, Navanethem Pillay (Republic of South Africa), former United Nations High Commissioner for Human Rights, in her report to the Economic and Social Council on the human rights situation of older persons, concluded that existing Agreements were inadequate and that dedicated measures were needed, such as a new international instrument and/or a new special procedure mandate.³

BAGSO first became involved in 2012 – in connection with the establishment of the above-mentioned Working Group⁴ – in the discussion surrounding the potential extension of human rights protection for older persons. BAGSO welcomed the circumstance that the United Nations had decided to review the effectiveness of the existing system of human rights with regard to older persons. In concrete terms, BAGSO referred to gaps in protection within German family and social legislation, as well as to the special protection requirements of older persons in developing countries.⁵

The report by the Independent Expert now confirms that human rights protection of older persons must be reinforced. The call on the States to consider proposals for elaborating a convention to protect the rights of older persons is one that BAGSO expressly upholds.

³ The 17-page Report can be found in English here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/420/71/PDF/G1242071.pdf?OpenElement>

⁴ Information on previous work by the “Open-ended Working Group on Ageing” (OEWG) can be found here: <http://social.un.org/ageing-working-group/> – At its Seventh Working Session (New York, 12-15 December 2016) the OEWG will also deal with the “Kornfeld-Matte-Report.”

⁵ The full Declaration can be found here [in German]: www.bagso.de/fileadmin/Aktuell/News/Erklaerung_der_BAGSO_zum_1.10.12.doc

In the process the following points should be kept in mind:

1. One important starting point for the discussion of a dedicated convention at UN level might be – some exceptions aside (see below) – the Inter-American Convention on Protecting the Human Rights of Older Persons⁶ of 2015 – as the first human rights instrument specifically on the protection of older persons –, especially as the Inter-American community of States comprises industrialised countries as well as industrialising and developing countries.
2. While in Germany and other industrialised nations the need for action is considered greater in the area of implementation of current rights, in industrialising and developing countries a specific human rights instrument can constitute a prime basis for nationally setting down fundamental rights.⁷
3. However, even in industrialised countries like Germany, areas exist where the protection of older persons needs to be extended under law. Thus there is, particularly in occupational and professional life, age-based discrimination that can evidently not be averted by current legal provisions.
4. Rigid age limits for certain occupations or honorary offices do not do justice to the plurality of age. The age-related exclusion of persons from certain types of financial services should also be prevented by law.⁸
5. Besides, as already elaborated by BAGSO in its Declaration of 2012, protection from the use of force in institutional care and familial care needs to be further extended. More robust forms of protection, notably preventive public mechanisms including prevention-oriented means of intervention, like those that exist in child and juvenile welfare laws, are urgently needed. With regard to the “vulnerable elderly” the European Charter of rights and responsibilities of older people in need of long-term care and assistance also provides a good model for a dedicated UN Convention.⁹

⁶ The Convention, which thus far has solely been signed by Argentina, Bolivia, Brazil, Chile, Costa Rica, and Uruguay, and has not yet entered into force can be found in English under: http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf - Also, the African Union reinforced the human rights of older persons 2014 in an additional protocol to the African Charter on Human and Peoples' Rights: http://www.au.int/en/sites/default/files/newsevents/workingdocuments/27995-wd-protocol_older_person_-_english_-_final.pdf; here too, the ratification process has not yet been concluded.

⁷ A number of typical problem situations in developing countries or relating to emergency and disaster situation have been described in the BAGSO Declaration of 2012 (see Footnote 5).

⁸ Since loan agreements, e.g., are not bulk business, they do not yet fall within the scope of the [German] General Act on Equal Treatment (AGG: Allgemeines Gleichbehandlungsgesetz).

⁹ The Charter can be found in English under: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf. The German version of the Charter, which came into being with the assistance of BAGSO Member “Bundesinteressenvertretung für alte und pflegebetroffene Menschen” (BIVA), can be found here: http://www.age-platform.eu/images/stories/22493_AGE_charte_europeenne_DE_indd.pdf

6. All over the world, older persons make significant contributions to society; be it within the family, in the neighbourhood, at work, in politics, through volunteering. The aspects of autonomy, participation, and empowerment should, therefore, receive a strong emphasis in a dedicated human rights document.
7. It should be made explicitly clear that the rights enshrined in the Convention apply to all persons regardless of their age. The Convention relates specifically to older persons insofar as it deals with rights whose violations concern older persons or certain vulnerable groups of older persons (such as persons suffering from dementia) especially frequently.
8. A non-age-based (human) rights system is a prime contribution to the requisite overcoming of stereotypical notions of age.¹⁰ A definition of an older person as an individual of or over a certain age, as contained in the Inter-American Convention on Protecting the Human Rights of Older Persons, is something which we consider counter-productive. Moreover, the intention cannot be that a person in need of care may not appeal to the Convention because he or she has not yet attained the age limit.
9. BAGSO calls for the fullest possible participation by older persons and their representatives to be ensured during the elaboration of a dedicated human rights instrument as well as the latter's implementation in national law.
10. Lastly: the human rights approach and the development perspective that underlies the process of realisation, step by step – albeit rather haltingly at times – of the second International Plan of Action on Ageing, do not contradict each other in the eyes of BAGSO. Both approaches have their place and will, at best, fully complement one another.

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¹⁰ This corresponds to a recommendation by the expert commission for the sixth report on the elderly with reference to national legislation; cf. "Sechster Bericht zur Lage der älteren Generation in der Bundesrepublik Deutschland – Altersbilder in der Gesellschaft" (2010) ("Sixth report on the situation of the older generation in the Federal Republic of Germany - Notions of age in society"), Chapter 11: "Altersgrenzen im Recht und Altersbilder" ("age restrictions in law and notions of age"), p. 195 et seq.