

Ageing and the protection of human rights: current situation and outlook

Sandra Huenchuan
and Luis Rodríguez-Piñero



This document was prepared by the Latin American and Caribbean Demographic Centre (CELADE)–Population Division of the Economic Commission for Latin America and the Caribbean (ECLAC), with funding from the Swedish International Development Cooperation Agency (SIDA) as part of Component 3 on Social Protection Strategies for an Ageing Population of the 2010-2011 joint ECLAC-SIDA Programme on Protection and Social Inclusion in Latin America and the Caribbean and with support from the 2010 Annual Workplan Project of the Latin American and Caribbean Regional Office of the United Nations Population Fund (UNFPA) (Project ID: RLA6P41A, Act. 13), under the supervision of Dirk Jaspers Fajjer, Director of the Division. It was authored by Sandra Huenchuan, an expert on age-related issues with CELADE, and Luis Rodríguez-Piñero Royo, a consultant for the same Division. Carmen Márquez Carrasco and Fernanda Stang provided valuable research assistance and also had the collaboration of Pablo Tapia, a consultant for CELADE.

This English translation of document LC/W.353 does not include annexes 3 and 4 of the original, Spanish-language version.

The views expressed in this unedited document are the sole responsibility of the authors and may not coincide with those of the Organization.

Cover design: Alejandro Vicuña Leyton

LC/W.353

Copyright © United Nations, March 2011. All rights reserved.
Printed at United Nations, Santiago, Chile

Contents

Abstract.....	7
Introduction.....	9
I. Paradigm shift: ageing as a human rights	13
A. Concepts and models of ageing.....	13
1. Concepts of old age: chronological, social and physiological age.....	14
2. Ageing and old age: analytical models.....	16
3. Ageing and older persons as viewed from a rights-based perspective.....	20
II. Development of the rights of older persons in International law.....	25
A. United Nations human rights instruments.....	27
1. Treaties.....	27
2. Special procedures of the Human Rights Council.....	30
3. United Nations resolutions.....	30
4. International plans of action on ageing.....	32
B. Other universal International standards.....	32
C. Inter-American human rights standards.....	33
III. International, regional and national policies and standards regarding older persons in Latin America and the Caribbean.....	37
A. International and Regional policies.....	37
B. National standards and policies.....	39
1. Constitutional protection of the rights of older persons.....	39
2. Laws affording special protection for the rights of older persons.....	41
C. Special legislation: objectives and contents.....	42
IV. The need for-and value of-an International convention on the rights of older persons.....	47
A. Human rights: adapting to the effects of demographic change.....	50
B. Giving more visibility to ageing-related issues.....	50
C. The need to clarify the contents of the rights of the older persons.....	50

D.	The existence of previous International instruments of non-conventional character.....	51
E.	The need to clarify State obligations with respect to older persons.....	51
F.	The need for strengthening International protection.....	52
G.	The need to promote a human rights-based approach to ageing policies.....	52
V.	Towards the basic contents of an International convention.....	53
A.	The purpose and scope of a convention.....	53
B.	General obligations.....	54
C.	The rights to be guaranteed.....	55
1.	The right to equality and non-discrimination.....	55
2.	Awareness-raising.....	56
3.	Right to life and to a dignified death.....	56
4.	Right to physical, mental and emotional integrity, and to a dignified treatment.....	56
5.	Older persons in situations of detention or imprisonment.....	57
6.	Legal personality and capacity.....	57
7.	Right to participate in the social, cultural and political life of community.....	57
8.	Right to an adequate standard of living and social services.....	58
9.	Right to physical and mental health.....	58
10.	Right to education and culture.....	58
11.	Right to housing and to a healthy environment.....	59
12.	Rights to work.....	59
13.	Rights to social security.....	59
14.	The rights of older women.....	60
15.	The rights of indigenous elders.....	60
VI.	Measures for promoting an International convention on the human rights of older persons.....	61
A.	Stakeholder engagement.....	61
1.	Civil Society.....	61
2.	International and other inter-governmental bodies and agencies.....	62
3.	National Human Rights Institutions.....	62
B.	Key forums for promoting the convention.....	63
1.	Human Rights Council.....	63
2.	Commission for Social Development.....	64
3.	ECLAC.....	66
C.	Measures complementing the dynamics of an International convention.....	67
1.	The establishment of a Special Rapporteur of the Human Rights Council.....	67
VII.	Conclusions.....	69
	Bibliography.....	73
	Annexes.....	77
Annex 1	Brasilia Declaration.....	79
Annex 2	General recommendation No 27 on older women and protection of their human rights.....	83
	Box index	
Box 1	Obligations assumed by states parties with regard to human rights.....	21
Box 2	Initiatives concerning a declaration on the rights of older persons.....	26
Box 3	The rights of older persons in the constitutions of Ecuador, The Plurinational State of Bolivia and the Dominican Republic.....	40
Box 4	Special legislation protecting rights in old age: what the law covers.....	43
Box 5	International conventions on human rights: basic concepts.....	47

Box 6	Affirmative action	55
Box 7	Statement made on behalf of Mercosur to the Commission For Social Development, 2010	65
Table index		
Table 1	Committee on Economic, Social and Cultural Rights: Contents of General Comment No.6.....	28
Table 2	Committee on the Elimination of Discrimination Against Women: Selected Provisions of General Recommendation No.27	29
Table 3	Latin America: Rights protected under National Legislation on Older Persons, 2010.....	46
Figure index		
Figure 1	Risks associated with old age and their manifestations.....	16
Figure 2	Perspectives on the Individual Ageing Process	18
Figure 3	Dimensions of a Rights-Based Consensus	22
Figure 4	Latin America: Time line for the passage of laws that protect the rights of older persons	41

Abstract

The use of a human-rights-based approach to the analysis and interpretation of age-related issues has marked a paradigm shift with regard to a stage of life that has traditionally been associated with a wide range of unmet needs, and the United Nations has made an extremely valuable contribution to this change. In the case of older persons, however, there is no legally binding instrument that protects their rights, as there is for other groups that are subject to discrimination. In order to remedy this situation, the extremely disparate norms that now exist will have to be consolidated.

The Brasilia Declaration, issued in 2007 at the Second Regional Intergovernmental Conference on Ageing in Latin American and the Caribbean and ratified the following year by ECLAC in resolution 644(XXXII), gave rise to two important mandates for addressing this situation, inasmuch as it called upon participating governments to work towards the development of an international convention on the rights of older persons and to designate a special rapporteur to look into relevant issues.

This publication seeks to supplement earlier contributions made by CELADE in respect of the first of those mandates. To that end, it begins by examining the conceptual and theoretical models underlying the approach taken to issues on the academic and political agendas that are of concern to older persons. An overview is then provided of international and regional norms relating to the promotion and protection of the rights of older persons. This discussion is accompanied by an analysis of national laws for the protection of the rights of older persons in Latin America. Arguments for an international convention on older persons' rights are then put forward from the perspective of Latin America and the Caribbean, together with a discussion of the essential components of such an instrument. Finally, the discussion turns to measures for moving towards the approval of such a convention that could be taken at a regional level. In addition to the full texts of the Brasilia Declaration and general recommendation No. 27 of the Committee on the Elimination of Discrimination against Women, there are two other annexes that provide very useful information on possible components of a future international convention on the rights of older persons and their sources and on the content and sources of legislation on the rights of older persons in the countries of the region.

Introduction

The Brasilia Declaration (ECLAC, 2008), adopted in 2007 by the Second Regional Intergovernmental Conference on Aging in Latin American and the Caribbean,¹ and ratified in ECLAC resolution 644(XXXII) of 2008, called upon participating Governments to work towards the adoption of a international convention regarding the rights of the older persons (Article 24), as well as to the establishment of the mandate of a Human Rights Council Special Rapporteur responsible for the promotion and the protection of the rights of older persons (Article 25).

Following up on commitment during the last biennium three meetings were held. The First and Second Follow-Up Meetings to the Brasilia Declaration, which took place, respectively, in Rio de Janeiro, Brazil (2008)² and in Buenos Aires, Argentina (2009).³ At the Third Follow-Up Meeting to the Brasilia Declaration, held in Santiago (Chile), from 5-6 October 2009, participating countries requested the Secretariat of the United Nations Economic Commission for Latin America (ECLAC) to prepare “a proposal of a strategy on how to advance in the follow up of article 24 and 25 of the Brasilia Declaration.”⁴ This proposal should include the “minimum content necessary in an international convention on the rights of older persons from the Latin American and Caribbean perspective.”⁵ This document was presented by the CELADE – Population Division of ECLAC in the last meeting of the Special Committee on Population and Development, celebrated between 12 and 14 of May in 2010.

That research, which was presented in the above-mentioned document and other, earlier studies prepared by CELADE in follow-up to the Brasilia Declaration, indicates that the disparate nature of laws and regulations governing the rights of older persons interferes with their effective

¹ Brasilia Declaration. The second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean: towards a society for all ages and rights-based social protection, Brasilia, 4 - 6 December 2007.

² “Reunión de seguimiento de la Declaración de Brasilia. Informe de relatoría”, http://www.cepal.org/celade/noticias/noticias/7/34107/Reunião_Rio_Set_Idoso_2008.pdf.

³ “Segunda Reunión de seguimiento de la Declaración de Brasilia: Hacia una Convención sobre los Derechos de las Personas Mayores”, http://www.cepal.org/celade/noticias/noticias/5/35715/Relatoria_BuenosAires.pdf.

⁴ Reporte ejecutivo: III Reunión de Seguimiento a la Declaración de Brasilia: Por los Derechos de las Personas Mayores, párr. 6. Available at http://www.cepal.org/celade/noticias/documentosdetrabajo/4/37434/InformeEjecutivo_IIIReuniondeseguimiento.pdf.

⁵ Ibidem.

protection. The absence of specifically targeted standards and norms (particularly in the form of a treaty) such as those that have been established for other vulnerable groups or groups subject to discrimination within society—or both— has a number of practical implications for the promotion and protection of older persons' rights.

First, existing international standards do not establish a coherent set of principles to serve as guidelines for national legislation and public policy. The United Nations Principles for Older Persons, approved by the General Assembly in 1991, provide a universal frame of reference for those rights. By their very nature, however, those principles are generic and have not been translated into concrete standards in many of the spheres in which older persons are most at risk of having their rights violated.

Second, general human rights instruments and other international provisions do not cover a series of specific rights which need to be defined in greater detail in the light of the new understandings and agreements that are reflected, *inter alia*, in national legislation and case law (particularly in Latin America and the Caribbean), as well as international, regional and sectoral policies. The various initiatives that have been launched to date in the form of principles, guidelines or other “soft law” instruments are also a reflection of the need for specific definitions of certain human rights as they relate to older persons.

A convention on this specific subject would help to consolidate the extremely varied range of relevant provisions and to clarify the situation with respect to possible ambiguities in the recognition of the rights of older persons, thereby furthering the efforts of States, international bodies and civil society stakeholders to promote and protect those rights.

Such a convention would also help to strengthen States' and international and regional organizations' efforts to enforce and promote those rights on the ground. Although existing United Nations treaty bodies—especially the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women—are showing a growing interest in specifically addressing the rights of older persons, their involvement in this area is still quite limited, and there are many issues that do not fall within their mandates.

Third, the adoption of a convention of this sort would contribute to the evolving interpretation of general international and regional human rights instruments and to the design and implementation of human-rights-based public policies that are fully aligned with the universally accepted objectives of the Madrid International Plan of Action on Ageing.

Such a convention has thus become essential in order to direct priority attention to issues of concern to older persons while at the same time clarifying the human rights principles that should guide the formulation of development programmes, policies and laws within the context of demographic shifts.

As noted by the Director of CELADE - Population Division of ECLAC on 28 October 2010 at the special session of the Permanent Council of the Organization of American States (OAS) on the human rights of older persons: “We are faced with an unavoidable change in context. When the human rights covenants and some of the specific conventions (such as the one on women's rights) were adopted, the ageing of the population was not a sufficiently relevant issue for the work of international or regional agencies. Today, the situation is completely different. In the [Latin American and Caribbean] region, there are over 53 million older adults, or 9% of the total population, and the average annual growth rate of this group will be from three to five times higher than the rate for the population as a whole in 2000-2025 and 2025-2050. This is a silent revolution—as acknowledged by the United Nations—that, because of its unprecedented pace and the backdrop of inequality against which it is taking place, will have serious implications for development, public policy and human rights. We cannot straggle behind. We have to move towards broader and greater equality, which, in this case, entails the full inclusion of older persons” (Jaspers, 2010).

It is hoped that this study will supplement earlier CELADE contributions to the effort to move towards an international convention on the human rights of older persons. It starts out by developing the conceptual and theoretical models underlying efforts to address issues of concern to older persons that are on academic and political agendas, in general, and, in so doing, looks at the biomedical, psychosocial and human-rights considerations involved. This is followed by a general discussion of standards and laws concerning the promotion and protection of the rights of older persons at the international and regional levels, together with an analysis of national laws for the protection of older persons' rights in Latin America. The study then turns to the arguments, from a Latin American and Caribbean perspective, for an international convention on the rights of older persons and to the essential elements of such a convention. It closes with a series of proposed measures for promoting the approval of a convention of this nature as viewed from a regional vantage point.

It is hoped that this study will provide a basis for research into this issue and a fuller understanding of it and that, most importantly, it will provide input useful to member States working to protect the rights of older persons at the national, regional and international levels. A further hope is that it will serve as a valuable reference for civil society organizations concerned with this issue.

I. A paradigm shift: ageing as a human rights issue

A. Concepts and models of ageing

Before a legally binding convention on the rights of older persons can be framed, the category of persons entitled to those rights must be defined.

First of all, there is no single paradigm for old age and ageing, both of which relate to a multi-faceted process that is determined not only by the passage of time, but also by physiological, social and cultural factors.

A distinction has to be made between the chronological aspects of old age and its social construct. According to the chronological criterion used by a majority of the countries in the region in their legislation, old age begins at 60, although this threshold has changed more in recent years than at any other time in the entire history of the Western world. At the start of the nineteenth century, a person was considered to be old at age 40, whereas, today, it is difficult to set a definite age at which a person can be said to be old.

The chronological definition of age is determined by sociocultural factors. Each society sets an age limit after which people are considered to be part of the older or elderly population, although, invariably, the dividing line between adults and elders is closely related to physiological age. In general, the age limit is correlated with the loss of certain instrumental and functional capacities that are required to maintain a person's autonomy and independence and, although this will vary from individual to individual, it is directly related to the normative definitions which a culture ascribes to changes in the body (i.e., "social age").

Old age can thus be both a time of loss and a time of fullness, depending on the combination of individual and generational resources and opportunities to which people have access during their lives. This, in turn, will be determined by their situation and their position within society. Age thus combines with other factors of social differentiation—such as gender, social class and ethnic origin—in determining a person's access to those resources and opportunities and the person's ability to take advantage of them.

In addition, the various approaches to the interpretation of the issues addressed by laws, policies and programmes for older persons must be identified. The issues dealt with by these types of instruments are social constructs that reflect specific world views (Elder and Cobb, 1993) and are directly related to the concept of old age that serves as the basis for the delineation of approaches for achieving given objectives.

Traditionally, the predominant view, at a programmatic level, of old age has characterized it as a stage at which economic, physical and social capacities are all declining. In the first case, this is reflected in reduced income; in the second, in a loss of autonomy; and, in the third, in the absence of a social role. The rights-based approach paves the way for a paradigm shift in this regard, since it promotes the empowerment of older persons and the creation of an age-integrated society. This implies that older persons are subjects of law, rather than simply beneficiaries and that they therefore enjoy certain guarantees and has certain responsibilities to themselves, their family and society, to their immediate surroundings and to future generations.

These considerations all form part of the debate concerning old age and ageing as public and human-rights issues on today's international and regional policy agendas.

1. Concepts of old age: chronological, social and physiological age

A definition of the concept of old age can be approached from at least three different standpoints based on chronological, physiological and social factors.

Chronological age is essentially biological in nature and is manifested in differing degrees of various functional disorders. It refers to age as measured in years. When this criterion is used, old age is defined as beginning at 60 or 65 years and is often set by law for “older adults” or “senior citizens”. From this standpoint, ageing entails changes in a person's place within society, since many responsibilities and privileges—especially those associated with employment—are determined by his or her chronological age (Arber and Ginn, 1995).

Physiological age is determined by the physical ageing process, which, although linked to chronological age, cannot be equated directly with a person's age as measured in years. This definition of age relates to the loss of functional capacities and the gradual decline in bone density, muscle tone and strength that occurs with the passage of time (Arber and Ginn, 1995).

One of the terms associated with physiological age is “senility”, which refers to the physical and/or mental deterioration experienced by some people which prevents them from continuing to lead a normal social and private life (Fericgla, 1992). Other related terms are the “old-old” (a minority group composed of weak and sickly persons) and the “young-old” (older persons who, despite their chronological age, are vital, vigorous and active) (Papalia and Wendkos, 1988).

Finally, the concept of social age refers to the attitudes and behaviours that are regarded as being appropriate for a given chronological age group (Arber and Ginn, 1995). This view of old age—like that of gender—is a social and historical construct based on the meaning which the cultural model assigns to the biological processes of ageing. It relates to a biologically based social category framed by subjective perceptions—how old a person feels—and imputed age—how old others think a person is—(Arber and Ginn, 1995). Viewed from this vantage point, old age (aside from its direct relationship to a person's chronological or natural age) is intrinsically determined by the production process, certain trends in consumption and the pace or pattern of life mandated by each society (Fericgla, 1992).

An expression associated with social age is that of “senior citizen”, which is regarded as a nice way of referring to old age. For Ham Chande (1996), this term has historically denoted a stage of advanced age at which people's functional capacities and degree of autonomy are such that they are

able to lead independent, fully satisfactory lives. This stereotype has a great deal in common with the idea of “the golden years” following retirement, during which people are thought to have leisure time that they can devote to pleasurable activities and recreation. For other authors (Romieux, 1998, and Fericgla, 1992), however, it is nothing more than a euphemism used to mask the reality of old age, which is seen as a stigma, and to distance it from the associated idea of death.

Clearly, then, although old age necessarily entails a biological and chronological component, the most important aspect from a human-rights perspective is its social construct. In Western society, the prevailing view of older persons and the issues of concern to them focuses on the idea of old age as a stage during which persons will have unmet economic, physical and social needs (Huenchuan, 1999, 2004 and 2009). As a result, many of the policies and actions relating to older persons focus on what other groups have that they do not, based on an androcentric organizational and functional model of society.

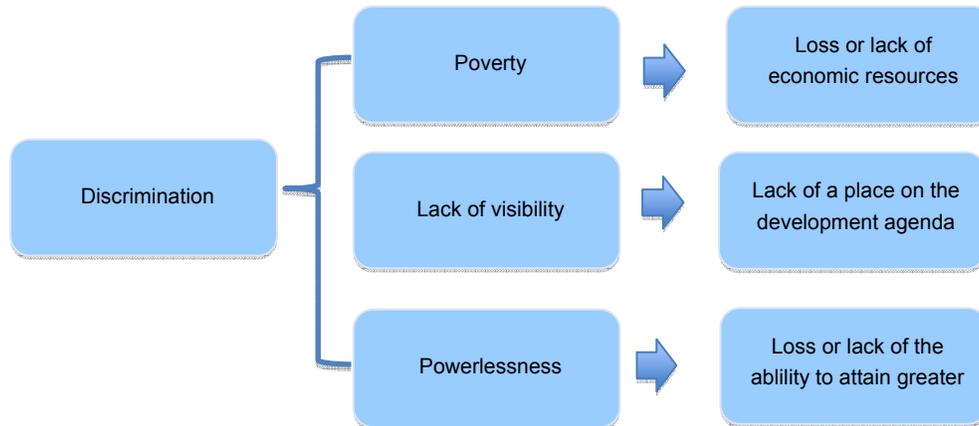
The predominant focus of policy measures, by their very nature, is on mitigating these losses or shortfalls, and they are often designed only for those individuals and sectors that rely on the State for subsistence. Only in rare cases is government action focused on offering the highest possible living standards for older persons based simply on their identity as members of society and on their legitimate aspirations as citizens.

The reason for this is that government institutions have not yet adapted—either structurally or ideologically—to the shift in the age distribution of the population. They continue to operate on the basis of a youth-centred construct in which old age is invariably associated with loss (Huenchuan, 2003). Older persons are viewed in terms of the extent to which they approach or depart from a supposed standard of normality that, far from being neutral, is clearly biased in favour of physical and mental parameters that fit in with the dominant culture’s stereotype (Courtis, 2004). The situation is even more difficult for older women, who are often viewed through the prism of established paradigms, many of which simply disregard age relations. This approach emphasizes the distance separating older women from the dominant archetype, either of men of working age or of women during their childbearing years. It is also clearly reflected in the theory of the political economy of ageing, which incorporates women but does not adjust the model to them, and in feminist thought that fails to clearly conceptualize the life cycle as an intrinsic component of the accompanying analysis (Huenchuan, 2010).

Under these circumstances, age discrimination can be said to be the greatest problem facing older persons, inasmuch as it interferes with or blocks the recognition, enjoyment or exercise, on an equal footing, of all fundamental political, economic, social, cultural, civic and other human rights and freedoms. As a corollary, older persons are exposed to poverty and a lack of visibility and are placed in an increasingly untenable position, with all of these situations taking on the particular characteristics associated with this stage of life (see figure 1).

Clearly, the formal recognition of equal rights as set forth in existing international human rights instruments or national laws, with no further distinction being made, does not adequately redress the disadvantageous position in which older persons currently find themselves, since the prevailing structure and ideology prevent this from occurring. Some countries do have laws and regulations that encourage older persons to participate fully in society, but they often fail to achieve their purpose because the surrounding environment does not facilitate the full exercise of older adults’ rights as citizens. Society segregates them from other age groups, and older persons, as a group, also tend to act as a sector that has little influence in the corridors of power, all of which perpetuates their asymmetrical position in terms of the distribution of resources and benefits generated by the development process.

FIGURE 1
RISKS ASSOCIATED WITH OLD AGE AND THEIR MANIFESTATIONS



Source: S. Huenchuan, “Envejecimiento y género: acercamiento a la situación específica de las mujeres mayores en América Latina y de las recomendaciones internacionales”, paper presented at the Regional Seminar of Experts on Ageing, Gender and Public Policy, organized by the Interdisciplinary Study Group on Old Age and Ageing of the Universidad de la República, with support from the United Nations Population Fund (UNFPA), Montevideo, 9 and 10 September 2010.

Old age is invariably associated with a loss of capacity. Older persons may be viewed as having returned to a childhood state in which their age renders them incapable of being independent. They are not thought of as citizens, or at least not active ones, but rather, in the best of cases, as simply dependants who, by virtue of that position, receive certain social benefits. And although steps may be taken to enhance given individual skills or capabilities (relating to, for example, leadership or participation), they are rarely fully incorporated into relevant spheres of action (Etxeberria, 2008). Older persons therefore have limited scope in which to exercise their equality and freedom owing to the existence of explicit inequalities—in terms of their status or position and their rights—and to the fact that public policies often fail to take their needs into account (United Nations, 1995a).

It should be recognized, however, that older persons are not the only ones to face this kind of problem. At different points in time, other social groups have also voiced the same concerns. In the cases of women, children and persons with disabilities, these concerns have led to the adoption of specific human rights conventions whose purpose has been to reaffirm the applicability to those groups of rights that are more generally recognized in other international instruments. Examples include the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2007).

2. Ageing and old age: analytical models

It is difficult to find a theory or approach that will, in and of itself, provide a basis for a full understanding of old age and ageing; as will be seen later on, substantive theories are generally developed for use in interpreting a given situation with a view to arriving at responses to specific issues, but these kinds of theories do not offer satisfactory answers to questions about the personal and social life of older persons (Huenchuan, 1999).

As a first step, a distinction can be drawn between two different facets of the ageing process: the ageing of the population and the ageing process experienced by individuals.

The ageing of the population is defined as an increase in the percentage of older persons (aged 60 and over) within the total population (Chesnais, 1990), although it is preferable to define it as an inversion of the age pyramid.

This process is the end result of the combination of two different but closely related transitions: a demographic shift and an epidemiological one. Briefly defined, the former refers to changes in the structure of the population, which are mainly brought about by declines in birth and death rates. The epidemiological transition is the result of a reduction in the incidence, prevalence and lethality of infectious and acute diseases, coupled with an increase in the incidence, prevalence and lethality of chronic degenerative and incapacitating ones (Ham Chande, 1996).

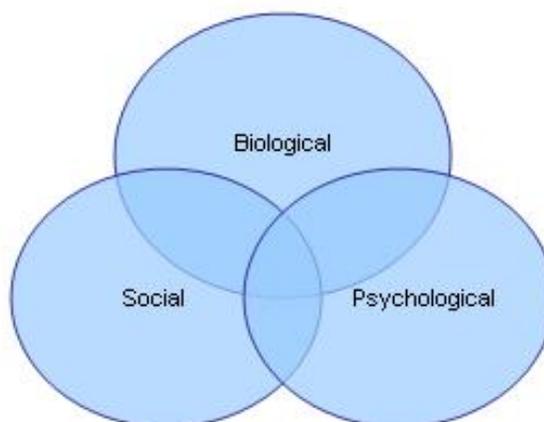
A society's transition towards demographic maturity is the logical outcome of a number of highly positive factors and should therefore be regarded as yet a further step in societal evolution (Castells, 1992). It does, however, give rise to a series of difficulties unless the social protection system has been adjusted to accommodate this demographic change.

This is why the policymakers who devise development strategies in countries with old or ageing populations waver between a positive and negative view of this process. Thus far, four main ways of characterizing the relationship between ageing and development have emerged, each of which relates to a different—and potentially conflicting—interpretation of the actuality, meaning and concept of old age as viewed from an individual standpoint:

- Older persons are a low priority on society's development agenda, as they are seen as being incapable of making a contribution to the development effort or of benefiting from it. They are thus regarded as the beneficiaries of special measures within a context of scarce resources.
- Older persons are viewed as an impediment to development because of their economically dependent position. They are perceived as being a drain on scarce resources, precisely because they have traditional values and beliefs that are seen as running counter to the changes associated with economic growth and modernization.
- Older persons are regarded as a development resource and a back-up labour force.
- Older persons are seen as potential victims of modernization because their status declines as countries develop (Montes de Oca, 1994).

The ageing process, as experienced by individuals, can be addressed from a number of different perspectives, each of which is underpinned by a different theory (see figure 2).

FIGURE 2
PERSPECTIVES ON THE INDIVIDUAL AGEING PROCESS



Source: S. Huenchuan, *Adultos mayores, diversidad y políticas públicas*, Fund for the Study of Public Policy, University of Chile/Social Security Institute, Santiago, Chile, 1999.

a) Biological ageing

The approach taken to biological ageing is based on two theories: the theory of programmed ageing, according to which the ageing of the body is part of a normal developmental pattern for each type of organism that is predetermined for each species and is subject to no more than minor modifications; and the theory of natural “wear and tear”, according to which the body ages due to its continuous use, i.e., age is the result of cumulative damage to the body (Papalia and Wendkos, 1998).

Proponents of the theory of programmed ageing argue that, because each species has its own pattern of ageing and life expectancy, this pattern is set and innate, whereas advocates of the wear-and-tear theory compare the body to a machine whose parts ultimately wear out after long use (Papalia and Wendkos, 1998).

The difference between the two theories has practical implications. If people are programmed to age in a certain way, little can be done to slow the process and ward off dependency. Consequently, all older persons are dependent. By contrast, if people age because their bodies are wearing out, then there is something they can do to shield themselves from physiological stress, increase their life expectancy and improve their quality of life.

By the same token, some gerontologists draw a distinction between “primary ageing” (the gradual process of physical deterioration that begins at an early age and continues, inexorably, as the years pass) and “secondary ageing” (the result of illness, abuse and other factors that, in many cases, are under a person’s control) (Papalia and Wendkos, 1998).

b) Psychological ageing

This perspective focuses on the individual and the way in which he or she copes with the passage of time. Growing older, viewed from this vantage point, is seen as a personal process of adaptation to the changes—both in the body and in one’s social environment—that occur as a person ages. In analytical terms, the emphasis is on the ways in which individuals confront and respond to the changes that they undergo, how they seek solutions for the problems they face, and how they accept and assume the losses that will inevitably come so that they can continue to feel content and interested in life (Commission National Para el Adult Mayor, 1995).

This approach has been criticized for relying too heavily on generalizations based on certain characteristics that are assumed to be exhibited by everyone at given stages in the life cycle (Redondo, 1990) and for not taking due account of the social dimensions of ageing and, as a result, viewing older persons as a homogenous group with the same needs, skills and forms of behaviour.

One of the concepts associated with this school of thought is that of “successful ageing”, first introduced by John Rowe in 1987, which is described as the result of the maintenance of functional, physical, mental, emotional and social capacities, good nutrition, an active or engaged lifestyle and recourse to suitable means of compensating for declining skills, among other elements (Villas, 1996).

According to the theory about maintaining an active life, the more active the older population is, the more successfully the members of that population will age (Papalia and Wendkos, 1998). As noted by Arber and Ginn (1995), however, this view of older persons as devoting their time exclusively to their personal development and to youthful consumption habits and lifestyles is open that is entirely out of reach for the majority of older persons, who have low incomes and/or suffer from poor health.

A different concept of successful ageing is developed in the theory of disengagement, which characterizes ageing as a mutual process of distancing. Older people voluntarily cut back on their activities and commitments, while society promotes generational segregation by pressuring older persons to retire and to withdraw from social and other activities. Some critics of this theory assert that this disengagement is more closely associated with factors such as poor health, widowhood, retirement and impoverishment than with age as such (Papalia and Wendkos, 1998).

This approach also encompasses the theory espoused by Ericsson (1985), which associates this stage of life with the eighth psychosocial crisis in the development of the ego: “ego integrity versus despair”. If integrity wins out, it paves the way for wisdom, which Ericsson describes as an informed and detached concern with respect to life versus death. The other side of the picture is disheartened apathy as a reaction to a growing sense that the end is growing near and of confusion and helplessness.

Redondo (1990), basing his work on Ericsson’s psychosocial theory, contends that industrialized societies tend to foster discouragement and, as its correlate, apathy, rather than ego integrity or wisdom. Huenchuan (1999) has pointed out that, in traditional rural societies, the paradigm for the resolution of this crisis is provided by older persons and is based on the application of their accumulated knowledge and skills to decision-making and daily life. In sum, it is based on wisdom (also understood as the pragmatic expression of intelligence), which enables older persons to look at their capacities and limitations and which helps them to choose wisdom as the path for resolving this final life crisis.

c) Social ageing

The sociology of ageing has developed numerous ways of looking at and interpreting the social positions of older persons. The major theoretical approaches to this sort of analysis are the functional theory on ageing, the political economy of ageing and the theory of structural dependency.

Advocacy of the functional theory of ageing peaked in the 1960s and 1970s. This approach to old age characterizes it as a detachment from society and, in terms of game theory, as a progressive loss of functionality. The critics of this approach argue that this way of looking at ageing provides an ideological tool for justifying characterizations of the ageing population as problematic and unproductive members of society who are not committed to its development. They also point up the emphasis that it places on each person’s situational adaptation, which opens the way for the development of a growing sense of egocentrism and isolation during old age (Bury, 1995).

In terms of the political economy of ageing, the key point in understanding the position of older people in modern capitalist society is that their quality of life during this stage in the life cycle is directly influenced by the individual’s position in the labour market at the time he or she retires (Estes, 1986). Critics of this approach argue that, although it may be a useful one, the fact is that a pre- and

post-retirement continuum does not exist, at least in the economic sphere (income level) or in terms of social (work-based) relations; they also point out, however, that the alternative —that of considering older persons as a homogeneous social category of persons uninvolved in the production system who do not pay social security taxes— is not satisfactory either (Redondo, 1990).

Structural dependency theory directs attention towards the overall social system rather than the characteristics of given persons. It asserts that the structure and organization of the production sector is at the root of dependency and runs counter to approaches that emphasize social constructionism (Mouzelis, 1991).

This last theory sheds light on important issues, particularly with respect to the standards and resources that influence and place limitations on the day-to-day lives of older persons. It also sets aside the individualism of earlier theories on ageing (Bury, 1995). As noted by McMullin (1995), however, none of these theories questions the assumptions underlying the mainstream school of thought, which looks at people's lives within the context of established sociological frameworks and measures older persons against the standard of the productive and reproductive lives of younger generations. None of this provides a satisfactory basis for understanding old age.

In short, the models used for looking at the status and position of older persons in society have been based on biomedical and social perspectives that are anchored in the past and that, for the most part, have portrayed this group as a problem for their families and society and have characterized ageing as an obstacle to development. This view of old age and ageing is used to segregate older persons and to keep them at a distance.

Thus, all the entryways to the structures of daily life —the workplace, the family, social interactions— are based, for the most part, on the prevailing “standard”, which, in this case, is people of working age. The fact that adjustments are rarely made for departures from this arbitrary standard paves the way for an exclusionary effect (Quinn and Deneger, 2002). Viewed from this perspective, chronological age is the main source of physical problems, declining functionality, economic difficulties or a lack of appreciation for the roles of older adults. Thus, the fact that older persons are not integrated into society is seen as being their fault, rather than society's.

It was not until the 1980s that, thanks to the United Nations' efforts, the analysis of the problems faced by older persons and possible solutions began to be addressed within the context of the debate concerning the public sector and the welfare State. This was acknowledged in the decision reached by the World Assembly on the Elderly in 1982 to change its name to the World Assembly on Ageing “in view of the interrelatedness of the issues of aging individuals and the aging of populations.”⁶

3. Ageing and older persons as viewed from a rights-based perspective

At its thirty-first session, in March 2006, ECLAC stated that: “Given the principle that public policy must be guided by a rights-based approach, development processes should be pursued within the normative framework of civil, political, economic, social and cultural rights as set forth in binding national and international agreements.”

This perspective alters the assumptions underlying the development of laws, policies and programmes, since the point of departure is no longer the provision of assistance to people who have certain needs, but rather the existence of persons with certain rights which the State and the rest of society must uphold (Abramovich and Courtis, 2006; OHCHR, 2004; ECLAC, 2006). The individual is therefore the main subject of development, and the universal guarantees set forth in the international community's human rights system constitute a conceptual framework capable of informing a coherent set of guiding principles and rules (Abramovich, 2004; ECLAC, 2006). This approach also provides a

⁶ Resolution 35/129 on problems of the elderly and the aged, 92nd plenary meeting, 11 December 1980.

way of setting out States' obligations in terms of respect for the economic, social, cultural, civil and political rights involved in any long-term strategy (see box 1).

BOX 1
OBLIGATIONS ASSUMED BY STATES PARTIES WITH REGARD TO HUMAN RIGHTS

- The obligation to respect human rights: States parties must refrain from interfering with the enjoyment of economic, social and cultural rights enshrined in human rights instruments.
- The obligation to protect human rights: States parties must prevent third parties from infringing economic, social and cultural rights by, for example, promoting environmental protection by businesses and punishing discrimination in private institutions.
- The obligation to promote human rights: States parties must take affirmative action to ensure the genuine exercise of rights. This obligation entails the organization of the entire governmental apparatus in such a way as to ensure that it is capable of providing legal guarantees for the free and full exercise of human rights (Inter-American Court of Human Rights, Velásquez Rodríguez case, 29 July 1988).

Source: Sandra Huenchuan and Alejandro Morlachetti, "Derechos sociales y envejecimiento: modalidades y perspectivas de respeto y garantía en América Latina", *Notas de población* No. 85 (LC/G.2346-P), Santiago, Chile, Economic Commission for Latin America and the Caribbean (ECLAC), 2007. United Nations publication, Sales No. S.07.II.G.105.

In Latin America and the Caribbean, the human-rights-based approach has taken on great importance as a normative and programmatic framework for development (ECLAC, 2006), and there is consequently an increasing tendency to draft laws focusing on specific rights and to undertake social and institutional efforts to develop public policies on such rights (Guendel, 2000). All the States in the region have ratified at least three of the seven main human rights conventions that were in force as of 2006 and consequently are subject to binding international legal obligations (Huenchuan, 2009).

The integration of human rights into the development framework helps to ensure that development measures take account of the special circumstances of vulnerable, marginal, underprivileged or socially excluded people or groups (OHCHR, 2004; ECLAC, 2006). This has helped to make it possible to move beyond the conceptual and normative foundations of traditional public development policies and institutions, which have been based on standardized concepts of the population that view certain attributes—those of adult males of certain ethnic origins—as determinants of identity, legal status and citizenship. Within this context, the specific characteristics of women, indigenous peoples, persons with disabilities and older persons, for example, have not been fully taken into account.

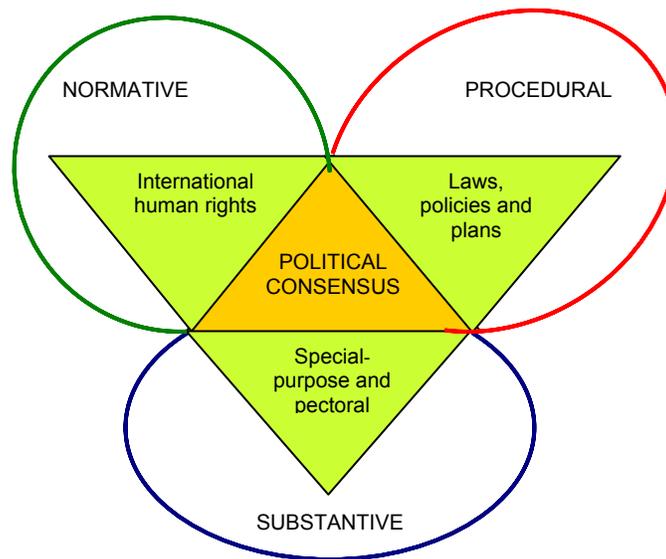
The human-rights-based approach, on the other hand, promotes the enjoyment of human rights by all social groups and therefore helps to ensure that persons who have been denied those rights in the past will now be treated equally and with respect for their human dignity, thereby paving the way for social integration and, on that basis, the construction of a "society for all" (United Nations, 1995b).

Population ageing has significant human-rights implications (CEDAW, 2009) because it ushers in new opportunities for implementing this approach and, as a corollary, for building the citizenry of the twenty-first century. First, it opens the way for reconciling the needs and interests of all groups within society so that progress can be made towards a fully integrated society in which each and every person, regardless of his or her age, has certain rights and responsibilities and has an active role to play (United Nations, 1995b). Second, it places members of society in a position which enables them to demand specific sorts of measures or services on the basis of their age and provides scope for responding to demands from other stakeholders for the expansion, specification or intensification of respect for human rights.

From this standpoint, one of the chief challenges for rights-based public policies is how to go about helping to build a society that opens its arms to all, a society in which people, regardless of their age or other social differences, have the same opportunities to exercise and secure full respect for their human rights and fundamental freedoms.

As discussed in earlier publications (Huenchuan, 2009), the strategy used to promote a human-rights-based approach to the issues of concern to older persons should provide for the development and implementation of particular concepts and contents in the normative, procedural and substantive dimensions (see figure 3).

FIGURE 3
DIMENSIONS OF A RIGHTS-BASED CONSENSUS



Source: S. Huenchuan, "Aging, human rights and public policy", *Libros de la CEPAL*, No. 100 (LC/G.2389-P), Santiago, Chile, Economic Commission for Latin America and the Caribbean (ECLAC), 2009. United Nations publication, Sales No. E.08.II.G.94.

- *Normative dimension*: If a human-rights-based approach is to be taken to issues of concern to older persons, public-sector action and the institutions responsible for taking that action should be expressly founded upon international human rights standards, since, even though older persons are not explicitly covered as a defined group, binding regional or international human rights instruments⁷ can afford legal protection for the rights of older persons if those instruments are used correctly.

These instruments have to be supplemented with the jurisprudence and doctrine of the human rights treaty bodies, which, through their general comments and recommendations to States parties, have developed more precise definitions and interpretations of States' main obligations under the human rights conventions and of the rights that are protected by those instruments.

⁷ Such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Declaration of the Rights and Duties of Man and the Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights (hereafter referred to as the "Protocol of San Salvador"), among others.

One example is general comment No. 6 (1995) of the Committee on Economic, Social and Cultural Rights, which deals with the economic, social and cultural rights of older persons. In that comment, the Committee provides guidance to States parties in order to help them to arrive at a fuller understanding of their obligations to older persons in terms of the application of various provisions contained in the Covenant (United Nations, 1995a).

The Committee on the Elimination of Discrimination against Women also made a valuable contribution in its concept note of August 2009 on the draft general recommendation on older women and protection of their human rights, in which it examined how the articles of the Convention on the Elimination of All Forms of Discrimination against Women relate to older persons (CEDAW, 2009). On 19 October 2010, it finally adopted its general recommendation No. 27 on older women and protection of their human rights, which explores the relationship between all the articles of the Convention and ageing, identifies the multiple forms of discrimination that women face as they age, provides guidance concerning the obligations of States parties under the Convention and offers policy recommendations (see the following chapter and annex 2).

- *Procedural dimension:* If a rights-based approach is to be taken to the concerns of older persons, legislation and policies on ageing need to promote and protect the rights and fundamental freedoms of older persons. And in order for this to be the case, persons holding political office have to provide the means and resources needed to introduce such measures as, for example, the constitutionalization of rights, the development of special protective laws and the start-up of policies or plans of action to guarantee the rights of older persons. The budget allocations required to finance the implementation of laws, regulations and policies that are binding upon the State also have to be made. All of these instruments must be based on three fundamental principles: non-discrimination, progressivity and participation.
- *Substantive dimension:* The rights-based approach as applied to ageing-related issues involves two associated spheres of action. The first concerns concrete measures to be applied and areas of responsibility to be pursued through sectoral or special-purpose programmes targeting older persons. These actions and the associated benefits or services should be directed towards ensuring the fuller exercise of the rights of older persons. Programmes of this sort should be universal in coverage and should provide mechanisms to guarantee the relevant entitlements (ECLAC, 2006).

The second sphere of action entails the cross-cutting implementation of an age-friendly approach or, in other words, the mainstreaming of issues of concern to older persons into public policy. This will call for the development of mechanisms for fulfilling the State's obligations to this age group within the general framework of government activity.

Clearly, then, the application of international human rights instruments is a key tool for promoting and protecting the rights of older persons on an affirmative, broad-ranging basis. In essence, these instruments provide a means of transcending the sphere of the individual in order to establish what governments' and the whole of society's responsibilities are in this regard, as well as to focus on equipping older persons to manage their lives independently.

II. Development of the rights of older persons in international law

To date, the rights of the older persons have not been object of a specific coverage by the United Nations human rights system in the form of a specific convention or treaty, as it is the case in relation to other specific groups, such as women, children or, more recently, persons with disabilities. The absence, and, as discussed below, the desirability of such instrument, does not however preclude the fact that the situation of the human rights of older persons have been subject of increased attention and concern by the international community.

The review of the standards enshrined in existing human rights instruments of different legal status, both at the United Nations and at the regional level, as well as the authoritative construction of those standards by human rights bodies and mechanisms, allows to conclude that a clear international normative consensus has emerged concerning the minimum content of the rights of older persons under international law. In turn, this normative consensus reflects and interacts with recent trends of constitutional and legal reform at the domestic level, as shown, particularly, in the context of Latin America and the Caribbean.

The emerging international consensus concerning the rights of older persons provides a firm normative argument in favor of an international convention regarding these rights. As discussed in further detail in Section II of this report, the need for such convention lies more on the need to strengthen the international protection on the rights of older persons than on the existence of a “legal vacuum” regarding these rights. Owing to the important proliferation in recent decades of standards affirming the rights of older peoples, the current legal context may be best depicted in terms of normative dispersion fragmentation. This context generates a number of practical difficulties, which in turn limit the capacity by State Members, and the international community as a whole, to provide the special protection required by these persons in their enjoyment of basic human rights on an equal basis with other sectors of society.

Existing international standards provide already a list of issues of particular concern for older persons, while identifying the kind of measures required for safeguarding the rights of these persons. Moreover, these standards represent, unavoidably, an important framework of reference in the definition of a future international convention in this realm.

This section provides a brief overview of the evolution of international human rights law concerning the rights of older persons. While a complete description goes beyond the objectives of the present report⁸ the section underlines only some of the most important standards affirmed in United Nations human rights treaties and General Assembly resolutions, and other international instruments and policies, as well as those progressively developed by United Nations human rights bodies and mechanisms in their interpretation of generally applicable standards. It also pays a particular attention on the normative developments that have taken place within the Inter-American Human Rights system, of particular relevance for Latin American and Caribbean countries, as well as to recent processes of constitutional and legal recognition of the rights of older persons in those countries.

BOX 2

INITIATIVES CONCERNING A DECLARATION ON THE RIGHTS OF OLDER PERSONS

Four different documents calling for a declaration on the rights of older persons have been introduced either formally or as discussion papers to United Nations bodies and their specialized organs (Sidorenko, 2008).

The Declaration of Old Age Rights, presented by Argentina in 1948, espoused the rights to assistance, accommodation, food, clothing, care of physical and moral health, recreation, work, stability and respect (United Nations, 1948). The General Assembly referred the draft declaration to the Economic and Social Council for its consideration and requested that it prepare a report on the matter for a forthcoming session (United Nations, 1948). The following year, the Economic and Social Council requested the Secretary-General to draft a brief report on the subject for submission to the Social, Humanitarian and Cultural Committee and the Commission on Human Rights at its next session (Economic and Social Council, 1949). In response, the Commission on Human Rights sent a memorandum to the Secretary-General in which it informed him that, due to the fact that there was so little time between the session of the Economic and Social Council and the Commission's session, it would not be able to prepare the necessary documentation; it therefore proposed that the question be considered at the following session of the Commission (Commission on Human Rights, 1949). There was, however, very little follow-up or progress made with regard to this early initiative on the part of Argentina.

In 1991, the International Federation on Ageing and the Dominican Republic submitted the draft Declaration on the Rights of Older Persons, which served as the basis for the United Nations Principles for Older Persons, which were adopted by the General Assembly in 1991. The proposal emphasized that fundamental human rights do not diminish with age and that, because of the marginalization and impediments that old age may entail, older persons run the risk of losing their rights and being rejected by society unless those rights are reaffirmed and respected (International Federation on Ageing, 1998). The main difference between the original proposal and the United Nations Principles is that the proposal used the language of human rights, whereas the Principles place greater emphasis on duties, thereby limiting the scope of the recommendations and focusing more on the individual rather than on collective responsibility.

In 1999 the Dominican Republic submitted the draft Declaration of Interdependence to the Commission for Social Development. That document called for the promotion and respect of existing ties among peoples at the international level and of the bonds linking people and groups at the micro-social level (Economic and Social Council, 1998).

(continued)

⁸ For a more detailed overview of existing international and regional standards affirming the rights of older persons, see Luis Rodríguez-Piñero, *Los desafíos de la protección internacional de los derechos de las personas de edad*. Santiago, ECLAC, 2010.

Box 2 (concluded)

Also in 1999, the American Association of Retired Persons (AARP) of the United States submitted the draft Charter for Society for All Ages (Sidorenko, 2008) on the occasion of the International Year of Older Persons. This initiative was expected to follow the same procedural path as the proposal put forward by the International Federation on Ageing in 1991, but it failed to move forward. This charter placed emphasis on the shared issues of concern to different sectors of society and made recommendations regarding the interdependence of individuals and society, the interdependence of the different stages of life (in the spheres of education and training, employment and productive activity, income protection, health and social services) and the interdependence of generations (AARP, 1997).

None of the proposals discussed above has been adopted; the proposal made by the International Federation on Ageing and the Dominican Republic was the only initiative that was taken up to any extent and eventually shaped into the United Nations Principles for Older Persons.

Source: S. Huenchuan, “Los derechos de las personas mayores y los instrumentos internacionales de protección. Consideraciones generales”, document prepared for Special Secretariat for Human Rights of Brazil, 2008, unpublished; A. Sidorenko, International Action on Ageing: Human Rights Dimension, New York, Association of American Law Schools, Annual Meeting, 2-6 January 2008; United Nations, Draft Resolution on a Declaration of Old Age Rights (A/C.3/213/REV1), 26 November, 1948; United Nations, resolution 213 (III), Declaration of Old Age Rights, 4 December 1948; Economic and Social Council, resolution 198 (VIII) Declaration of Old Age Rights, 2 March 1949; Commission on Human Rights, Declaration of Old Age Rights, Memorandum by the Secretary-General (E/CN.4/163), 28 April 1949; International Federation on Ageing, Declaration on the Rights and Responsibilities of Older Persons, 1998; Economic and Social Council, letter dated 3 February 1998 from the Permanent Representative of the Dominican Republic to the United Nations, addressed to the Chairman of the Commission for Social Development (E/CN.5/1998/6), 10 February 1998; American Association of Retired Persons (AARP), Draft Charter for Society for All Ages, October, 1997

A. United Nations human rights instruments

1. Treaties

The first references to the older persons in international human rights instruments are only indirect, and generally limited to social protection and the right to an adequate standard of living. Thus, the Universal Declaration affirms the right to social benefits in case of older age.⁹ Similarly, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) affirms the “right of everyone to social security, including social insurance.”¹⁰

The first United Nations human rights convention to explicitly affirm age as a prohibited basis for discrimination was the Convention on the Elimination of All Forms of Discrimination against Women, proscribing the discrimination against women in relation to their access to old age subsidies.¹¹ The scope of prohibited discrimination on the basis of age was subsequently widened by the Convention on the Protection of the Rights of Migrant Workers and their Families,¹² and, subsequently, by the Convention on the Rights of Persons with Disabilities, in relation to such issues as the elimination of prejudices, stereotypes, and harmful practices; access to justice, or the protection against exploitation, violence and abuse.¹³

⁹ Universal Declaration on Human Rights, adopted by General Assembly resolution 217(III) of 10 December 1948, Article 25.

¹⁰ International Covenant on Economic, Social, and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, Article 9.

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, Article 11(1)(e).

¹² International Convention on the Protection of the Rights of Migrant Workers and their Families, Adopted by General Assembly resolution 45/158 of 18 December 1990, Article 1.

¹³ Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution 61/106 of 3 May 2008, articles 1(2), 8, 13, and 16.

Together with these specific references in United Nations human rights treaties, the rights of older persons have been repeatedly affirmed in numerous resolutions by the General Assembly. These instruments, often group under the label of “soft law,” have obviously a legal status that differs from treaties. However, this does not entail that they lack juridical relevance. Inasmuch as they have been adopted by the highest representative body of the United Nations, and with a view to expressing the common concerns, commitments and aspirations of the international community regarding the rights of the older persons, these instruments should be seen as authoritative reflections of an emerging normative consensus regarding the minimum contents of those rights under international law (see Table 1).

The Committee on the Elimination of Discrimination against Women has devoted particular attention to the situation of older women in relation to violence, education, illiteracy and access to social benefits in its concluding observations on the reports of various States parties. In 2000, as a contribution to the World Assembly on Ageing in Madrid, the Committee adopted decision 26/III, which is based on a systematization and further development of its jurisprudence regarding older women.¹⁴ In 2009, the Committee published a concept note on its draft general recommendation on older women and the protection of their human rights (CEDAW, 2009). In that note, the Committee acknowledges that changes in population structures have profound human rights implications and increase the urgency of addressing discrimination experienced by older women through the Convention, given that there is no other legally binding international human rights instrument to specifically address these issues.

TABLE 1
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS:
CONTENTS OF GENERAL COMMENT NO. 6

Article of the International Covenant on Economic, Social and Cultural Rights	Interpretation of the Committee on Economic, Social and Cultural Rights
Equal rights of men and women (article 3)	States parties should pay particular attention to older women and should institute non-contributory old-age benefits or other assistance for all persons, regardless of their sex, who find themselves without resources.
Rights relating to work (articles 6, 7 and 8)	States parties should take steps to prevent discrimination on grounds of age in employment and occupation, guarantee safe working conditions until retirement, employ older workers in circumstances in which the best use can be made of their experience and know-how, and put in place programmes that prepare workers for retirement.
Right to social security (article 9)	States parties must establish general regimes of compulsory old-age insurance, establish retirement age so that it is flexible, provide non-contributory old-age benefits and other assistance for all older persons who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.
Right to protection of the family (article 10)	Governments and non-governmental organizations should establish social services to support the whole family when there are elderly people at home and implement measures especially for low-income families who wish to keep elderly people at home.
Right to an adequate standard of living (article 11)	Older persons' basic needs for food, income, care, self-sufficiency and other elements should be met. Policies should be developed to assist them to remain in their homes by improving and adapting their dwellings.
Right to physical and mental health (article 12)	Investments must be made in health care for persons at all stages in the life cycle in order to help older persons remain healthy.
Right to education and culture (article 13)	The protection of this right should be approached from two different and complementary points of view: (a) the right of elderly persons to benefit from educational programmes; and (b) making the know-how and experience of elderly persons available to younger generations.

Source: Prepared by the author on the basis of United Nations, *The economic, social and cultural rights of older persons, general comment No. 6 (E/C.12/1995/16/Rev.1)*, Geneva, Committee on Economic, Social and Cultural Rights.

¹⁴ Committee on the Elimination of Discrimination against Women, “Decision 26/III: Ending discrimination against older women through the Convention” (A/57/38), chapter I, 7 May 2002.

On 19 October 2010, the Committee on the Elimination of Discrimination against Women adopted general recommendation No. 27 on older women and the protection of their human rights. Its purpose is to identify the multiple forms of discrimination experienced by older women and to provide guidance concerning States parties' obligations under the Convention with regard to women's rights and the need to ensure that people are able to age with dignity. It also makes policy recommendations concerning the mainstreaming of responses to the concerns of older women into national strategies, development initiatives and positive action so that older women can participate fully without discrimination and on the basis of equality with men. Guidance is also provided to States parties on the coverage of older women's situation in the reporting process on the Convention.

A brief summary follows of the contents of the recommendation, in general, and of what it says about discrimination, stereotypes, violence, participation in political affairs, education, work and other benefits, health, economic empowerment, social benefits, older rural and other vulnerable women, marriage and family life (see table 2). The summary is by no means exhaustive. The recommendation provides a wealth of elements and has therefore been reproduced in full in annex 2.

TABLE 2
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN:
SELECTED PROVISIONS OF GENERAL RECOMMENDATION NO. 27

Subject	Recommendations
General	<p>States parties should take appropriate legislative and other steps to eliminate discrimination against older women. They should adopt gender-sensitive and age-sensitive policies and measures to ensure that older women are able to participate fully and effectively in political, social, economic, cultural and civic affairs and in any other field in their societies.</p> <p>States parties have the obligation to ensure the full development and progress of women throughout their life cycle in times of conflict and in disaster situations, as well as in times of peace.</p> <p>States parties should gather, analyse and disseminate age- and sex-disaggregated information on the situation of older women, including those who live in rural areas and conflict zones and those who belong to minorities.</p> <p>States parties should provide older women with information about their rights and about how they can obtain legal services. They should also, inter alia, safeguard older women's property rights and ensure that they are not deprived of their legal capacity arbitrarily or in a discriminatory manner.</p>
Stereotypes	States parties have the obligation to combat negative prejudices and to modify culturally based behaviour patterns that are detrimental to older women. They must also reduce abuse and ill-treatment in all its forms.
Violence	<p>States parties have the obligation to acknowledge and prohibit violence against older women, including those with disabilities, in their legislation on domestic violence, sexual violence and institutional violence. They must investigate, prosecute and punish all acts of violence committed against older women, including those that are the result of traditional beliefs or practices.</p> <p>States parties should devote special attention to violence against older women during times of armed conflict, the impact of such conflicts on their lives and older women's contributions to peacemaking and reconstruction.</p>
Participation in public life	States parties have the obligation to ensure that older women have opportunities to participate in public and political affairs and to hold public posts, including elective office, at all levels.
Education	States parties have the obligation to ensure equality of opportunity in education for women of all ages and access to adult education and ongoing learning opportunities for older women.
Work and pension benefits	<p>States parties should facilitate the participation of older women in gainful employment without discrimination on the basis of sex or age.</p> <p>States parties have the obligation to ensure that older women are not discriminated against in terms of mandatory retirement ages in either the public or private sector and should provide suitable non-contributory pensions on an equal basis for all men and women who are not covered by the social security system.</p> <p>States parties must ensure that older women, including those who have childcare responsibilities, have access to the economic and social benefits corresponding to caregivers and to all necessary support when they are caring for aged parents or relatives.</p>
Health	States parties should provide the medicines required to treat chronic, non-communicable diseases, long-term health and social care, including care that allows for independent living, and palliative care.

(continued)

Table 2 (concluded)

Subject	Recommendations
Economic empowerment	States parties should remove age- and sex-based barriers to access to agricultural credit and should ensure access to technology for older women farmers and small-scale landholders. They should make means of transportation available to enable older women, including those living in rural areas, to participate in economic and social activities.
Social benefits	States parties should ensure that older women have access to suitable housing in accordance with their needs and should remove architectural and other barriers hindering their mobility. They must also provide social services that enable older women to remain at home and live independently for as long as possible.
Rural and other vulnerable women	States parties should provide access to water, electricity and other utilities for older women. They should also ensure the protection of older refugee and stateless women, as well as those who are internally displaced or are migrant workers, through the adoption of gender- and age-sensitive laws and policies.
Marriage and family life	States parties have an obligation to repeal all legislation that discriminates against older women in marriage and upon its dissolution, including in the areas of property and inheritance, and protect them from land-grabbing.

Source: Prepared by the author on the basis of United Nations, “General recommendation No. 27 on older women and protection of their human rights” (CEDAW/C/2010/47/GC.1), Committee on the Elimination of Discrimination against Women, 2010.

2. Special procedures of the Human Rights Council

Together with the standards progressively developed by United Nations Treaty Bodies, the Special Procedures of the former Commission on Human Rights, subsequently assumed by the Human Rights Council, has also played a role —albeit still limited— in relation to the specific situation of the older persons. Even though no thematic mandate currently exists within the Council’s special procedures machinery, other thematic procedures have identified the older persons as a group requiring of a special protection, such as in relation to the right to an adequate housing or the right to physical and mental health. A number of standards developed by thematic special procedures have also taken an old aged-specific approach, including the General Recommendation of the Special Rapporteur on torture;¹⁵ the Guiding Principles on international displacement;¹⁶ the Human Rights Guidelines for pharmaceutical companies in relation to access to medicine,¹⁷ and the Basic Principles and Guidelines on development-based evictions and displacement.¹⁸

3. United Nations resolutions

Together with these specific references in United Nations human rights treaties, the rights of older persons have been repeatedly affirmed in numerous resolutions by the General Assembly. These instruments, often group under the label of “soft law,” have obviously a legal status that differs from treaties. However, this does not entail that they lack juridical relevance. Inasmuch as they have been

¹⁵ General Recommendation of the Special Rapporteur on the question of torture, reproduced in Report submitted by the Special Rapporteur on the question of torture, Theo van Boven, pursuant to Commission resolution 2002/38, E/CN.4/2003/68 (27 February 2003), Annex 1.

¹⁶ Guiding Principles on international displacement, reproduced in further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission on Human Rights, mass exoduses and displaced persons: Report of the Representative of the Secretary General, Francis Deng, submitted pursuant to Commission resolution 1997/39. Addendum 2. E/CN.4/1998/53/Add.2 (11 February 2008)

¹⁷ Human Rights Guidelines for pharmaceutical companies in relation to access to medicine, reproduced in The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/63/263 (11 August 2008).

¹⁸ Basic Principles and Guidelines on development-based evictions and displacement, reproduced in Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18 (11 June 2007), Annex 1.

adopted by the highest representative body of the United Nations, and with a view to expressing the common concerns, commitments and aspirations of the international community regarding the rights of the older persons, these instruments should be seen as authoritative reflections of an emerging normative consensus regarding the minimum contents of those rights under international law.

In 1973, the General Assembly drew attention to the need to protect the rights and ensure the well-being of older persons.¹⁹ In 1990, it recognized the complexity and speed of the ageing of the world's population and the need for a common framework and basis for the protection and promotion of the rights of older persons (United Nations, 1991). One year later, the General Assembly adopted resolution 46/91 on the United Nations Principles for Older Persons, which focuses on five areas: independence, participation, care, self-fulfilment and dignity (United Nations, 1991).

The Principles uphold the same rights as the International Covenant on Economic, Social and Cultural Rights, but it does not cast them as rights in and of themselves. The right to Independence includes access to suitable housing, food, water, clothing and health care. In addition to these basic elements, the opportunity to engage in gainful employment and have access to education and training are also put forward. The right to participation is interpreted as meaning that older persons should be actively included in the formulation and implementation of policies that influence their well-being, should be given the opportunity to share their knowledge and know-how with younger generations, and should be able to initiate movements and form associations (United Nations, 1991).

The section of the Principles dealing with care states that older persons should benefit from family care and health care and should be able to enjoy their human rights and fundamental freedoms when residing in any shelter, care or treatment facility. With respect to self-fulfilment, the Principles state that older persons should have access to the educational, cultural, spiritual and recreational resources of society. Finally, in the section on dignity, the Principles state that older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse and should be treated fairly, regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution (United Nations, 1991).

The content of rights of older persons has been further developed by several other General Assembly resolutions. These include, notably, the United Nations Proclamation on Ageing,²⁰ as well as a number of specific resolutions related to older women.²¹ Other General Assembly resolutions incorporate specific standards regarding the older persons, including the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;²² the Standard Minimum Rules for non-custodial measures (the Tokyo Rules);²³ the Declaration on fundamental principles of justice for victims of crimes and abuse of power;²⁴ the Declaration on the elimination of violence against women, and the Declaration of the rights of indigenous peoples.²⁵

¹⁹ United Nations, resolution 3137 (XXVIII) on the question of the elderly and the aged, 14 December 1973.

²⁰ United Nations Proclamation on Ageing, adopted by General Assembly resolution 47/5 of 16 October 1992.

²¹ General Assembly resolution 44/76 of 8 December 1989: "Older Women;" General Assembly resolution 49/162 of 9 February 1995: "Integration of older women in development;" General Assembly resolution 56/126 of 25 January 2002: "Situation of older women in society;" and General Assembly resolution 57/177 of 30 January 2003: "Situation of older women in society."

²² United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, Principle 5(2) (special measures for older persons).

²³ United Nations Standard Minimum Rules for non-custodial measures, adopted by General Assembly resolution 45/110 of 14 December 1990, Principle 2(2) (non discrimination by reason of age).

²⁴ United Nations Declaration on fundamental principles of justice for victims of crimes and abuse of power adopted by General Assembly resolution 40/34 of 29 November 1985, Principle 3 (non discrimination by reason of age).

²⁵ United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly resolution 61/295 of 13 September 2007, Article 22 (special protection of indigenous elders).

4. International plans of action on ageing

In 1982, the States Members of the United Nations adopted the Vienna International Plan of Action on Ageing at the First World Assembly on Ageing, held in Austria. The States Members attending that conference “reaffirmed their belief that the fundamental and inalienable rights enshrined in the Universal Declaration of Human Rights apply fully and undiminishedly to the ageing, and recognized that quality of life was no less important than longevity, and that the ageing should therefore, as far as possible, be enabled to enjoy in their own families and communities a life of fulfilment, health, security and contentment, appreciated as an integral part of society.”²⁶

Twenty years on, the States Members adopted the Madrid International Plan of Action on Ageing at the Second World Assembly on Ageing. This plan devotes particular attention to developing countries and defines some of the central themes as follows:

- The full realization of all human rights and fundamental freedoms of all older persons; and
- Ensuring the full enjoyment of the economic, social and cultural rights and the civil and political rights of persons and the elimination of all forms of violence and discrimination against older persons (United Nations, 2002).²⁷

The Political Declaration and Madrid International Plan of Action on Ageing contributed to a better understanding of the rights of older persons within the context of international and national policies. Follow-up to the Madrid Plan of Action, in which the regional commissions of the United Nations have played a key role, has contributed to the framing of laws and regulations concerning these rights.

B. Other universal international standards

The minimum contents of the rights of the older persons have also been promoted by a number of legal instruments and policies adopted by international organizations and agencies, which are typically restricted to their respective mandates and expertise. This is the case of the various conventions and recommendations adopted within the framework of the International Labour Organisation (ILO). These include, by way of example, the Social Security (Minimum Standards) Convention;²⁸ the Invalidity, Old-Age and Survivors’ Benefits Convention,²⁹ Recommendation on older workers.³⁰ Old age considerations also taken into account in two of the ILO core conventions regulating fundamental rights at work, the Convention on Discrimination regarding Employment or Occupation, and the Freedom of Association Convention.³¹

²⁶ United Nations, General Assembly resolution 37/51 on the question of ageing, 3 December 1982.

²⁷ More recently, in 2008, on the occasion of the fifth anniversary of the Second World Assembly on Ageing, the United Nations Commission for Social Development adopted a resolution on the first review and appraisal of the Madrid International Plan of Action on Ageing in which it encouraged governments “to continue their efforts to mainstream the concerns of older persons into their policy agendas, bearing in mind the crucial importance of the realization of all human rights for older persons, and to prevent age discrimination.”

²⁸ ILO Convention concerning Social Security (Minimum Standards), 1952 (No. 102), adopted by the 35th session of the International Labour Conference on 28 June 1952, entered into force on 27 April 1955.

ILO Convention concerning Invalidity, Old-Age and Survivors’ Benefits, 1967 (No. 128), adopted by the 51st session of the International Labour Conference on 7 June 1967, entered into force on 1 November 1969.

³⁰ Recommendation on Older Workers, 1980 (No. 162), adopted by the 66th session of the International Labour Conference on 23 June 1980.

³¹ ILO Convention concerning Discrimination in Employment or Occupation, 1958 (No. 111), adopted by the 42nd session of the International Labour Conference on 25 June 1958, entered into force on 15 June 1960; ILO

In addition, specific provisions regarding the older persons are included in the Third and Fourth Geneva Conventions on international humanitarian law (1949), regarding, respectively, the treatment of prisoners of war and the protection of civilians in time of war.³² Worth mentioning is also the Convention on the International Protection of Adults, adopted by The Hague Conference in 2000, regulating issues of cross-national co-operation in relation to the protection of adult persons in situation of legal guardianship or otherwise requiring it.³³

C. Inter-American human rights standards

The foundational instruments of the inter-American human rights, the American Declaration on the Rights and Duties of Man,³⁴ and the American Convention on Human Rights,³⁵ failed to include any reference to the rights of the older persons. It was only in 1988, with the adoption of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”), that the rights of the older persons were explicitly affirmed in the context of the inter-American system, although restricted only to the area of welfare and social policies.

According to Article 17 of the Protocol, everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

- a) Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;
- b) Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
- c) Foster the establishment of social organizations aimed at improving the quality of life for the elderly.

Older persons have further been identified as a social group requiring special protection in other human rights instruments adopted by the OAS General Assembly, including the Inter-American Convention on the Elimination of Violence against Women (“Convention of Belem do Para”),³⁶ the Declaration of San Pedro de Sula: “Toward a culture of nonviolence,”³⁷ and the Inter-American

Convention on Freedom of Association and the Protection of the Rights to Organize, 1948 (No. 87), adopted by the 31st session of the International Labour Conference on 17 June 1948, entered into force on 4 July 1950.

³² Third Geneva Convention relative to the Treatment of War Prisoners, and Fourth Geneva Convention relative to the Treatment of Civilians in Times of War, adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949, and entered into force on 21 October 1950.

³³ Convention on the International Protection of Adults (No. 35), adopted on 13 January 2000 by The Hague Conference on International Private Law, entered into force on 1 January 2009.

³⁴ American Declaration on the Rights and Duties of Man, adopted by the Ninth International Conference of American States, Bogota, Colombia, 30 March-2 April 1948.

³⁵ American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, entered into force on 18 July 1978.

³⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”), adopted on 6 September 1994 by the Twenty-Fourth Regular Session of the General Assembly to the Organization of American States, entered into force on 3 May 1995, Article 9 (special measures of protection for older women).

³⁷ Declaration of San Pedro Sula: “Toward a culture of nonviolence,” adopted by OAS General Assembly resolution OEA/AG/DEC. 60(XXXIX-O/09) of 4 June 2009, during its 39th ordinary session, in San Pedro Sula, Honduras, Article 4 (prevention of violence, segregation, exploitation and discrimination against older persons).

Declaration on the Family.³⁸ A particular focus on the human rights situation is also found on the OAS General Assembly resolution on the legal situation of refugees, returnees, and displaced persons in the Americas,³⁹ as well as in the draft American Declaration on the Rights of Indigenous Peoples, currently under negotiation.⁴⁰

The inter-American human rights bodies, the Commission (IACHR) and the Court, have played, up to date, a relatively limited role with regards to the rights of older persons, possibly explained by the absence of specific references to those rights in the two main inter-American human rights instruments, the American Declaration and the American Convention. Exceptions to this general pattern are the Inter-American Court's decisions in "Five Pensioners" v. Peru (2003) and *Acevedo Buendía et al. v. Peru* (2009),⁴¹ where the Court has interpreted the right to property to encompass the prohibition to affect retirement benefits by subsequent amendments to State regulations.⁴² At the moment of writing this report, similar cases are still pending at the IACHR.⁴³

Finally in May 2009, the OAS General Assembly adopted a resolution on "human rights and older persons", calling for moving forwards "in the creation of international instruments" and "in the adoption of measures" to protect those rights.⁴⁴ The resolution further called for strengthening regional cooperation in this realm, and instructed the OAS Permanent Committee to convey an expert meeting with a view to "examining the feasibility of preparing an inter-American convention on the rights of older persons" (OAS, 2009, para. 3). In 2010, in resolution 2562 (XL-O/10), adopted at its sixtieth General Assembly, held in Lima, the Organization of American States reiterated "its request to the Permanent Council to convene for the second half of 2010 the special meeting of national representatives and experts from the academic sector and civil society, as well as from international organizations, for the purpose of sharing information and best practices and examining the feasibility of preparing an inter-American convention on the rights of older persons." That meeting was held on 28 October 2010.

³⁸ Inter-American Declaration on the Family, adopted by OAS General Assembly resolution AG/RES. 678(XIII-O/83) on 18 November 1983 during its 13th ordinary session, Article 15 (affirming the rights of "elderly or senior citizens" to an environment enabling them to live decent and active lives and participate in the country's social life).

³⁹ OAS General Assembly resolution on the legal situation of refugees, returnees, and displaced persons in the Americas, adopted by General Assembly AG/RES. 1602(XXVIII-O/98), on 3 June 1998 during its 28th ordinary session, at O.P. 3 (special measures of protection for older persons).

⁴⁰ Draft American Declaration on the Rights of Indigenous Peoples, reproduced in Record of the current status of the Draft American Declaration on the Rights of Indigenous Peoples (Outcomes of the Eleventh Meeting of Negotiations in the Quest for Points of Consensus, held by the Working Group) [Updated upon the conclusion of the Eleventh Meeting of Negotiations], OEA/Ser.K/XVI, GT/DADIN/doc.334/08 rev. 3 (30 December 2008), Article XVI.1 (recognition and protection of indigenous forms of family, without discrimination concerning gender or age).

⁴¹ I/A Court H.R., Case of "Five Pensioners" v. Peru (Merits, Reparations and Costs). Judgment of February 28, 2003. Series C, No. 98.

⁴² I/A Court H.R., Case of *Acevedo Buendía et al* ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru (Preliminary Objections, Merits, Costs and Reparations). Judgment of July 1, 2009. Series C No. 198.

⁴³ See *Amilcar Menéndez, Juan Manuel Caride and other (Pension System), v. Argentina*, IACHR, Report No. 03/01 (admissibility), Case 11.670 (2001); *Tomás Eduardo Cirio v. Uruguay*, IACHR, Report No. 119/01 (admissibility), Case 11.500 (2001).

⁴⁴ Resolution AG/RES. 2455 (XXXIX-O/09): "Human rights and older persons," adopted by the OAS General Assembly in 4 June 2009, during its 39th regular session, OP 1.

Even though they are not formally part of the inter-American human rights system, a number of sub-regional inter-governmental organizations of the Americas have also developed a number of standards regarding the older persons. These include the Andean Charter on the Promotion and Protection of Human Rights, adopted by the Andean Community of Nations;⁴⁵ and the Charter of Buenos Aires on Social Commitment in the Southern Common Market (MERCOSUR), Bolivia, and Chile.⁴⁶

⁴⁵ Andean Charter for the Promotion and Protection of Human Rights, adopted by the Presidential Council of the Andean Community of Nations on 26 July 2002, Arts. 46-47 (“rights of older adults”).

⁴⁶ Charter of Buenos Aires on Social Commitment in MERCOSUR, Bolivia and Chile, adopted on 30 June 2000 by the presidents of Argentina, Brazil, Paraguay, and Uruguay, Member States of MERCOSUR, and the presidents of Bolivia and Chile, Ops 3, 7 (special measures of protection for the elderly, including though social services, housing policies, and social integration and training programmes).

III. International, regional and national policies and standards regarding older persons in Latin America and the Caribbean

A. International and Regional policies

The international community's concern with the situation of older persons is further reflected in the gradual adoption, over the last decade, of a number of international policies that address specifically this situation from a rights-based approach. These policies have been promoted by both international and regional agencies in order to guide their own activities, as well as those of States and other stakeholders, within their respective realms of action.

At the regional level, at the thirtieth session of the Commission, held in 2003, by resolution 604 (XXX) the member States of ECLAC adopted the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing of the United Nations.

The Regional Strategy's first objective with regard to older persons and development is to "promote the human rights of older persons" and, to that end, it recommends that specific legislation be formulated and proposed in order to define and protect those rights in accordance with international standards and the instruments accepted by States members (ECLAC, 2004).

In 2007, ECLAC organized the Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean, which was held in Brasilia from 4 to 6 December. At that conference, the participating States Members adopted the Brasilia Declaration, in which they reaffirmed their "commitment to spare no effort to promote and protect the human rights and fundamental freedoms of all older persons, to work to eradicate all forms of discrimination and violence and to create networks for the protection of older persons with a view to the effective exercise of their rights" (ECLAC, 2008). In addition, in paragraphs 25 and 26 of the Declaration, they stated that they:

"25. Agree to request the member countries of the United Nations Human Rights Council to consider the possibility of appointing a special rapporteur responsible for the promotion and protection of the human rights of older persons;

26. Pledge to make the necessary consultations with our Governments to promote the drafting of a convention on the rights of older persons within the framework of the United Nations" (ECLAC, 2008)."

The importance of the Brasilia Declaration was reaffirmed by ECLAC at its thirty-first session in resolution 644 (XXXI), held in Santo Domingo, Dominican Republic, in June 2008.⁴⁷

The sessional ECLAC Ad Hoc Committee on Population and Development, which is the intergovernmental body that has final responsibility for the follow-up and review of issues related to population and development, including those covered by the International Plan of Action on Ageing and the Brasilia Declaration, pledged to work towards the preparation of an international convention on the rights of older persons at its regular session, held from 12 to 14 May 2010 at ECLAC headquarters in Santiago.

One of the main agreements was to hold an intergovernmental meeting in 2012 within the framework of the second review and appraisal of the Madrid International Plan of Action on Ageing. The participating countries also agreed on the importance of making progress towards the establishment of an international convention on the rights of older persons. To that end, they requested that the Executive Secretary of ECLAC convey their interest in drafting such a convention to the Secretary-General of the United Nations with a view to the establishment of a working group for that purpose. These agreements were ratified by ECLAC in resolution 657 (XXXI) at its thirty-first session, held in Brasilia from 30 May to 1 June 2010.

Of particular relevance in this regard is the path-breaking policy on active aging launched in 2002 by the World Health Organization, which operationalizes the basic human rights concepts enshrined in the United Nations 1991 Principles for Older Persons in relation to public and private health policies in the context of old age (WHO, 2002). This leading example was followed, the same year by its sister organization at the inter-American level, the Pan-American Health Organization (PAHO, 2002).

Both organizations have been further involved in developing standards regarding issues of special concern for the health of older persons from a rights perspective, and have also supported other similar initiatives. In 1993, WHO and PAHO supported the adoption by the Heads of Governments of the Caribbean Community (CARICOM) Charter on Health and Aging.⁴⁸ In 2002, WHO promoted the adoption of the Toronto Declaration on Global Prevention of Elder Abuse⁴⁹, in 2009 the theme also has been included in the PAHO Plan of action on the health of older persons, including active and healthy aging (PAHO, 2009).

Irrespective of their respective legal status, these policies and instruments further reflect and contribute to building the emerging international consensus regarding the rights of older persons, while helping clarify the content of those rights and State correlatives duties in specific areas. This make them also particularly useful instruments in devising the contents of a future international convention.

⁴⁷ Resolution 644 (XXXII) on population and development: priority activities for the period 2008-2010, adopted at the thirty-second session of the Economic Commission for Latin America and the Caribbean (ECLAC), Santo Domingo, 9-13 June 2008.

⁴⁸ Caribbean Charter on Health and Ageing, Carta del Caribe para la Promoción de la Salud, adopted at the Forum on Health and Ageing in Nasau (Bahamas), from 27 to 30 May 1993.

⁴⁹ Toronto Declaration on Global Prevention of Elder Abuse, adopted at the Expert Meeting on Elder Abuse, organized by the World Health Organization (WHO), the International Network on Prevention of Elder Abuse (INPEA), and the Ontario Network on Prevention of Elder Abuse (ONPEA) in Ontario, Canada, on 17 November 2002.

The Berlin Ministerial Declaration (UNECE, 2002) and the León Ministerial Declaration (UNECE, 2007) of the United Nations Economic Commission for Europe (UNECE) can be regarded as having made similar inroads, although they are not of the same scope and do not always reflect the same type of approach.

B. National standards and policies

1. Constitutional protection of the rights of older persons

The entitlement to human rights is underpinned by international human rights agreements and standards, but each country's constitution is the instrument that determines the rank of those treaties within its domestic legal system (ECLAC, 2006). Ever since democratic systems began to be established in the region, the tendency has been to incorporate international instruments into the national legal system.⁵⁰

In general, the rights set forth in international treaties are integrated into a country's constitutional provisions either through their interpretation or through their explicit incorporation. When older persons' rights are constitutionalized, then the legal system, public policies, the government's institutional structure, and the actions taken by government authorities must all be adapted to and aligned with those rights.

While older persons are, of course, entitled to all the rights and guarantees set forth in national constitutions, there are cases in which the rights of this social group are specifically recognized, as well. The constitutions of the Bolivarian Republic of Venezuela, Brazil, Costa Rica, Colombia, the Dominican Republic, Honduras, Nicaragua, Panama, Paraguay and the Plurinational State of Bolivia expressly state that older persons are entitled to special types of protection by the State. These States are joined by Guatemala in guaranteeing comprehensive protection to older persons and recognizing certain economic and social rights, which range from health care, food, decent living conditions and housing to the more general perspective of the welfare-State. All of them assume the obligation to adopt policies or programmes to ensure the effective exercise of human rights and recognize the State's duty to promote and implement such measures. Other States assume the obligation of adopting legislation for the protection of older persons. In Argentina, for example, it is the State's duty to enact and promote affirmative action legislation to ensure genuine equal opportunities and treatment for older persons, along with the full enjoyment and exercise of the rights enshrined in international treaties.

The protection of certain economic, social and cultural rights, such as the right to social security, is provided for in all the national constitutions that were examined, although the scope of the relevant provisions varies from country to country. Brazil's constitution expressly guarantees a minimum wage to all older persons who are in need of such an income, regardless of whether or not they have paid into the social security system. The Colombian constitution provides that the State shall guarantee a meals subsidy for indigent older persons, while the Cuban constitution explicitly states that social assistance will be provided to older persons who lack resources or support.

The Brazilian constitution classifies older persons as a vulnerable group and affords them priority, with that requirement being binding in cases of domestic violence. The constitutions of Brazil and Mexico prohibit discrimination on the basis of age, in general, while those of the Bolivarian Republic of Venezuela, Panama and Paraguay ban it in the workplace.

⁵⁰ In some constitutions (e.g., those of Argentina, the Bolivarian Republic of Venezuela and Nicaragua), the main human rights treaties are explicitly identified as having constitutional rank, which makes them more readily enforceable in domestic courts. In others, human rights treaties are considered to be a guide for interpreting established rights (Colombia). Others specify that international treaties supersede domestic law, which can be interpreted as meaning that they are subordinate to the constitution but prevail over all other national legislation (Brazil, Costa Rica, Honduras and Guatemala). Chile's and Ecuador's constitutions refer to international treaties in a more general way with regard to the respect for and promotion of human rights.

Older persons' right to be involved and be a part of community life is expressly recognized in the constitutions of Brazil and Colombia.

Constitutional recognition of the rights of older persons gives rise to the obligation for government authorities to ensure that those rights are upheld. While it would be desirable for specific laws to be adopted to protect such rights, the fact that they figure in a given country's constitution renders them enforceable, and they are therefore directly applicable. This is a binding obligation for government authorities, who may therefore not violate those rights either by action or by omission.

The fact that ageing is becoming an increasingly important issue in the region is attested to by the recently approved constitutions of Ecuador, the Plurinational State of Bolivia and the Dominican Republic, all of which deal far more extensively with the rights of older persons (see box 3).

BOX 3

THE RIGHTS OF OLDER PERSONS IN THE CONSTITUTIONS OF ECUADOR, THE PLURINATIONAL STATE OF BOLIVIA AND THE DOMINICAN REPUBLIC

The new constitutions of Ecuador, the Plurinational State of Bolivia and the Dominican Republic, which were adopted in 2008, 2009 and 2010, respectively, contain much more extensive provisions concerning the rights of older persons.

The fifth chapter of the constitution of the Plurinational State of Bolivia, for example, which deals with social and economic rights, establishes that all older persons have the right to their dignity, a quality life and human warmth in their old age and that the State will provide an old-age pension under the country's comprehensive social security system as provided for by law.

In addition, the State is to adopt public policies for the protection, assistance, recreation, leisure and participation in society of older persons in accordance with their capacities and abilities. Any form of mistreatment, abandonment, violence or discrimination against them is to be prohibited and punished.

Article 36 of Ecuador's constitution states that older persons shall receive specialized assistance on a priority basis in both the public and private sectors, especially in regard to their inclusion in social and economic affairs and protection against violence.

The State also guarantees specialized health care and medicines for older persons free of charge; gainful employment in accordance with their capabilities while taking into account their limitations; universal retirement coverage; and access to housing that will ensure their ability to live with dignity in a setting in which their views are respected and to which they consent. They are also, among other guarantees, to be accorded preferential treatment in the event of disasters, armed conflict or any other type of emergency, as well as special assistance, care and protection if they fall victim to chronic or degenerative diseases.

Article 57 of the constitution of the Dominican Republic, on protection for older persons, provides that the family, society and the State will render protection and assistance to older persons and will promote their involvement in economic and community affairs. It also provides that the State will guarantee comprehensive social security services and food subsidies for indigent older persons.

Source: Constituent Assembly, *Constitución política de la República del Ecuador, Quito, 2008*; Constituent Assembly, *Constitución Política del Estado Plurinacional de Bolivia, 2009*; National Assembly, *Constitución de la República Dominicana, Gaceta Oficial, No. 10561, 26 January 2010*.

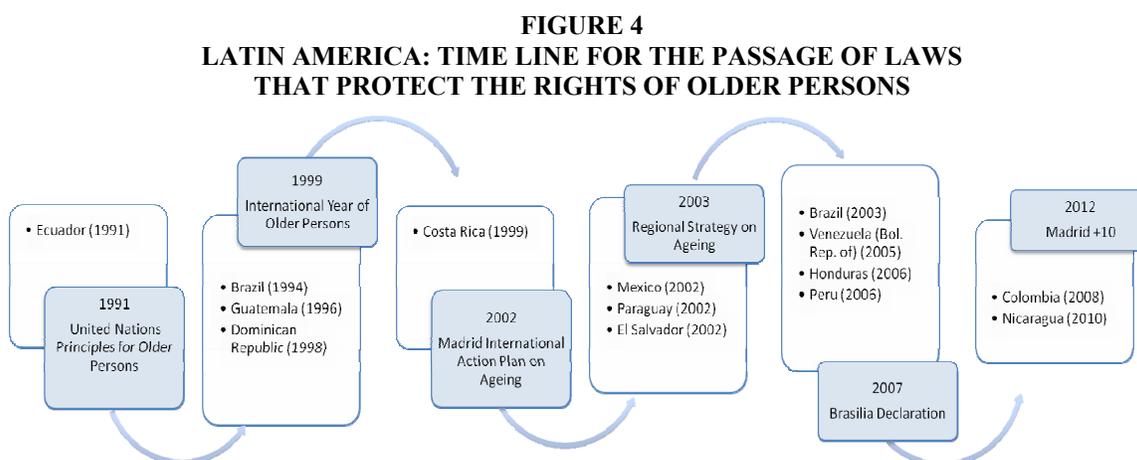
2. Laws affording special protection for the rights of older persons

As noted earlier, in order to move towards a human-rights-based approach to issues of concern to older persons, States should create the legal, political, economic, social and cultural conditions required for their integral development. States should thus not only refrain from interfering with the exercise of an individual's rights, but should also take positive action, by adopting administrative and legislative measures, to make certain that people can actually avail themselves of those rights.

In regard to legislative measures, countries can recognize some of the rights of older persons by including them in general laws or, as Argentina has done (Roqué, 2010), by establishing specific laws or regulations to protect their rights.

The first laws for older persons date from the early 1990s. Since then, more and more countries have joined the ranks of those that see the need to establish a legal framework for the protection of older persons' rights or for the regulation of comprehensive assistance for this social group, or both (see figure 4).

To date, 13 Latin American countries have special-purpose laws of this sort (the Bolivarian Republic of Venezuela, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Peru).⁵¹ Others are working on legislation of this type. In the Plurinational State of Bolivia, for example, a draft bill on the rights of older persons is under consideration and, in Chile, in July 2010 the Chamber of Deputies unanimously agreed to request that the President submit a comprehensive bill on the rights of older persons to Congress. Argentina is also working on a bill for the comprehensive protection of older persons' rights (Roqué, 2010), as is Panamá (Panama, Ministry of Social Development, 2010).



Source: Prepared by the author on the basis of the relevant legislation.

⁵¹ Chile's and Uruguay's laws are designed to set up a special-purpose institutional framework (in Chile's case, the National Service for Older Adults (Act No. 19.828 of 2002) and, in the case of Uruguay, the National Institute for Older Adults (Act No. 18.617 of 2009)).

C. Special legislation: objectives and content

The countries of the region are showing a marked tendency to move away from an approach based on the principles of social welfare towards one based on human rights in their treatment of older persons' affairs. This is apparent in the promulgation of special legislation, which generally aims to promote and guarantee the human rights of older persons (see box 4) by incorporating the standards set forth in human rights instruments and constitutional provisions.

This type of legislation has done much to build an approach in which ageing and old age are construed from the perspective of human rights and, although some elements of these laws—such as the rights of older women, indigenous elders and older persons in situations of crisis or disaster— remain weak or are absent altogether, their enactment is an essential step towards achieving higher levels of guarantees and protection.

Non-discrimination against older persons is the basis of most of the legislation in place today. Regardless of the stage of population ageing they have reached, virtually all the countries, including the Bolivarian Republic of Venezuela, Brazil, Colombia, the Dominican Republic, El Salvador, Mexico, Nicaragua, Paraguay and Peru, are acknowledging old age to be a stage of life at which rights are vulnerable, and they are, accordingly, putting in place specific measures to prevent or punish age-based discrimination.

The right to life and the right to die with dignity are at the heart of the protection of human existence. Laws which do not mention these concepts explicitly often encompass them by making reference to protecting older persons from the risk of dying from avoidable or preventable causes and offering them greater dignity at the time of death.

Personal integrity is in itself a fundamental right and is protected in general conventions on human rights. However, extra care is needed to ensure that these rights are respected in the case of older persons, precisely because they are often so vulnerable (Vásquez, 2004). On that premise, the legislation enacted in Brazil, Colombia, Costa Rica, the Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua and Peru provides for specific protection in this area, covering issues from exploitation, mistreatment or abuse of older persons to protection of image, autonomy, thinking, dignity and appreciation of the value of older persons.

The right to participate in political, cultural and social life is protected in most of the countries which have special legislation in place. In Nicaragua, the legislation fosters older persons' participation in community, recreational and social support activities. Mexico's legislation develops this prerogative further, by affording older persons the right to participate in comprehensive social planning development, in the formulation and implementation of decisions that directly affect their well-being, in neighborhood and street organizations and in the various levels of local administration. It also acknowledges older persons' right to associate and to form organizations to promote their development and influence measures directed towards the older population.

One area that has been widely developed in the current legislation is the right to an adequate standard of living and to social services, although the contents of this component vary from one country to another. In Costa Rica several articles of the law refer to different aspects of this right, including nourishment, access to benefits, transport and accessibility. Under Guatemalan legislation, the State has a duty to ensure and promote the right of older persons to an adequate standard of living, such that they are provided with education, nourishment, housing, clothing, comprehensive geriatric and gerontological care, recreation and leisure, and the social services they need in order to lead a useful and dignified life.

BOX 4
SPECIAL LEGISLATION PROTECTING RIGHTS IN OLD AGE:
WHAT THE LAW COVERS

- In Brazil, Law 10.741 establishes that older persons are entitled to enjoy all the rights inherent to humankind, and that it is the obligation of the family, the community and the State to ensure that these entitlements are observed.
- In Colombia, Law 1251 was enacted to protect, promote, restore and defend the rights of older persons; guide public policy, State plans and programmes, civil society and the family to ensure that ageing issues are given due consideration; and regulate the operation of institutions that provide care and assistance contributing to different aspects of older persons' development.
- In Costa Rica, Law 7935 establishes that public and private institutions responsible for implementing social programmes for older persons must provide them with information and advise them both on the guarantees enshrined in the law and on the rights set forth in their favour.
- In Ecuador, Law No. 127 and its later reform provide that the General Prosecutor's Office for Elder Affairs is responsible for the protection of older persons' economic and social rights and legal claims, with a view to ensuring that the rights enshrined in the law are observed.
- El Salvador's law on comprehensive care for older adults provides that older persons must be informed of their rights and the laws that protect them, and that they must enjoy the rights set forth in the constitution of El Salvador, the international treaties ratified by the country and other laws enacted to ensure their protection.
- In Honduras, Law 199 is aimed at improving quality of life, preventing age-based discrimination and helping to strengthen intergenerational solidarity, as well as creating a national policy for older adults and retirees and a bureau of older persons' affairs (DIGAM). It also seeks to promote older persons' incorporation into social security systems and their access to medical and hospital services, through training in gerontology and geriatrics and by fostering a culture of valuing older persons in the family, the State and in civil society.
- In Guatemala, the law on protection for older persons safeguards the interests of this age group that are guaranteed and promoted by the State.
- In Mexico, the stated purpose of the law on the rights of older persons is to ensure the exercise and observance of older persons' rights through national public policies.
- Nicaragua's law on older persons aims to guarantee full exercise of older persons' rights, by means of comprehensive protection to be provided by the State, society and the family, in order to offer a better quality of life and full integration of older persons into social, economic, political and cultural development.
- In Paraguay, Law 1885 is intended to safeguard the rights and interests of older persons living in the country.
- In Peru, the law on older adults establishes that all older persons have the right to effective protection from the State enabling them to exercise or defend their rights, and to have a normative framework that provides the legal mechanisms needed to protect enjoyment of the rights recognized under the constitution and the applicable international instruments.
- In the Dominican Republic, Law 352-98 guarantees the rights of older persons and sets forth measures to ensure that the State, the community and the family take whatever steps are needed to support all governmental and non-governmental organizations involved in furthering older persons' rights.
- In the Bolivarian Republic of Venezuela, the social services law guarantees those covered by the law human rights on a non-discriminatory basis, on the terms and conditions set forth in the constitution and the laws and treaties, covenants and conventions signed and ratified by the country.

Source: Prepared by the author on the basis of Act No. 10.741 (2003) of Brazil; Act No. 7935 (1999) of Costa Rica; Act No. 127 (1991); and the act amending the Act on Older Persons (2001) of Ecuador; the Older Adults Comprehensive Services Act (2002) of El Salvador; Senior Citizens Protection Act, Decree No. 80 (1996), of Guatemala; Older Adults Rights Act (2002), of Mexico; Older Adults Act, No. 28803 (2006), of Peru; Act No. 121 (1986) of Puerto Rico; Act No. 352-98 (1998) on the Protection of Ageing Persons, of the Dominican Republic; and the Social Services Act (2005), of the Bolivarian Republic of Venezuela.

The right to health care is protected in practically all the special legislation on older persons in the region. In El Salvador, older persons have the right to receive timely and effective medical, geriatric and gerontological care, and Paraguayan legislation states that older persons have the right to be afforded priority in health care. Other countries have developed this area more broadly: in Mexico, for example, older persons must, by law, have access to the means to meet their basic needs, including nourishment, goods, services and the human or material requirements for their comprehensive care; they are afforded preferential access to health services and the specific entitlement to fully enjoy the right to sexuality and physical, mental, psychological and emotional well-being; and they have the right to receive orientation and training in the areas of health, nutrition and hygiene, and to whatever may foster their personal care and well-being.

The right to education and culture is also guaranteed in almost all the legislation. In Peru, older persons have the right to participate in education and training programmes that may help them to continue to lead productive lives, and to preferential access to educational and cultural activities. The provisions in Nicaragua are very similar in content, but Brazil's legislation is broader, providing in article 20 that older persons have the right to education, culture, sports, leisure, diversion and entertainment, and to products and services that are appropriate for their particular age. Article 21 provides that the State shall guarantee older persons access to education, by adapting curricula, methodology and teaching materials to the educational programmes offered to them. Article 22 refers to the inclusion of content on the ageing process in the curricula of different levels of formal education and article 25 guarantees that the State will support the creation of open universities for older persons and will encourage the publication of books and periodicals with content and editorial standards suitable for older persons, including those aimed at facilitating reading, taking into account the natural deterioration of visual abilities.

The right to housing and to a healthy environment is protected in national legislation, as well. Practically all laws on older persons refer to priority in housing programmes, often through the provision of specific subsidies for acquiring or adapting a dwelling. This guarantee is further developed in Mexico's legislation, which specifies the right to live in safe, dignified and adequate surroundings, which meet the needs and requirements of older persons and where they may freely exercise their rights.

Where work is concerned, most bodies of national legislation establish the right to pursue a professional activity, with due regard for the physical, intellectual and mental abilities of older persons. The broadest development of this prerogative is found in the legislation of Costa Rica, which guarantees older persons the right to be selected for any job they are qualified to perform and prohibits age-based discrimination. It also affords them the right to working schedules and vacation plans suitable for their needs, providing that the proper functioning of the employing entity is not thereby prejudiced. They are entitled to the same rights as other workers and may not be physically, mentally or economically exploited. Countries less advanced in the demographic transition, such as the Dominican Republic, Nicaragua, Honduras and Paraguay, also provide legal protection at work, although in a different manner. In Nicaragua, for example, State and private sector institutions alike must take all steps necessary to ensure full access to work without prejudice to the exercise and enjoyment of the rights and benefits to which older persons are entitled by reason of age.

The right to social security is usually governed by specific provisions relating to that area, but in Costa Rica, El Salvador and Mexico it is also referred to in the provisions of special legislation on older persons. In Costa Rica, article 3 of the respective legislation establishes the right to a timely pension that helps older persons to meet their basic needs, whether or not they have contributed to a pension system. It also guarantees them social welfare in the event of unemployment, disability or loss of a living. In El Salvador older persons have the right to receive a timely retirement pension or subsidies for personal expenses, which must undergo regular cost-of-living adjustments. Lastly, in Mexico older persons have the right to be included in social assistance schemes in the event of unemployment, disability or loss of a living.

The rights of those living in long-term care institutions are also often covered by specific standards, which generally complement special legislation on the protection of older persons' rights. Although this format is not universal, it is the case in Paraguay, for example. Only three countries—the Bolivarian Republic of Venezuela, Costa Rica and the Dominican Republic— provide for protection in long-term care institutions under special legislation.

Costa Rican law develops this area in some detail. Article 5 of the law refers to the rights of older persons residing or using the services of private institutions and states that, as well as the right to integrity, all older persons who reside permanently or temporarily in a home, day centre, shelter or other type of establishment have the right to: (a) maintain relations with family members or friends and receive visitors during appropriate hours; (b) be informed in advance of the services provided by the establishment and their cost; (c) be informed of their state of health and participate in the treatment they need; (d) refuse to be given experimental medical treatment or to be overmedicated (polypharmacy); (e) not be transferred or moved from the establishment without their consent; (f) not be placed in isolation; (g) administer their own finances or choose someone to administer them and receive quarterly reports from that person; (h) enjoy privacy during visits by a spouse or partner; (i) move freely around the establishment and outside it.

Article 12 of the specific law in the Dominican Republic indicates that all older persons institutionalized in a geriatric establishment have the right, providing that their physical and mental condition allows, to move freely within and outside the establishment and to receive visits from family and friends, unless the technical and professional staff of the institution deem this to cause serious disruption. The law in the Bolivarian Republic of Venezuela provides that older persons have the right to enjoy their sexuality and, with this in mind, directs the National Social Services Institute to stipulate that long-stay establishments must provide privacy in the form of matrimonial rooms for married couples or established partners.

Lastly, only two countries—the Dominican Republic and Peru— include the rights of older persons in the event of detention or imprisonment in their specific legislation on older persons. Peruvian law refers to the right of older persons to be accommodated in appropriate conditions when imprisoned. Dominican law deals with the rights of older detainees in articles 5 and 6, providing that officers of the national police force must afford the greatest consideration and respect to older persons who are detained and must notify family members of the arrest within 24 hours. The judicial authorities are directed to treat these cases with particular care and to ensure that certain levels of health and nourishment are safeguarded during the process. Where the detainee is incommunicado, the court authority must order a daily medical examination. Lastly, article 6 states that the office of the procurator general shall instruct the responsible penitentiary officers to afford preferential treatment to older persons held in preventive custody, such that, as far as possible, the loss of freedom does not imply the loss of employment or the health services to which they are entitled, and does not prejudice a spouse or partner.

TABLE 3
LATIN AMERICA: RIGHTS PROTECTED UNDER NATIONAL LEGISLATION
ON OLDER PERSONS, 2010

Country	Right to equality and non-discrimination	Right to life and to die with dignity	Right to physical, mental and emotional integrity and dignified treatment	Right to participate in the social, cultural and political life of the community	Right to an adequate standard of living and to social services	Right to physical and mental health
Brazil	x	x	x	x	x	x
Colombia	x	x	x	x	x	
Costa Rica			x	x	x	x
Ecuador					x	x
El Salvador	x		x	x		x
Guatemala				x	x	x
Honduras	x		x	x		x
Mexico	x		x	x	x	x
Nicaragua	x		x	x	x	x
Paraguay	x				x	x
Peru	x	x	x	x	x	x
Dominican Republic	x	x	x	x	x	x
Venezuela (Bolivarian Rep. of)	x			x	x	x

	Right to education and culture	Right to housing and a healthy environment	Right to work	Right to social security	Fundamental rights and freedoms of institutionalized persons	Rights of older persons during detention or imprisonment
Brazil	x	x	x	x		
Colombia	x		x			
Costa Rica	x	x	x	x	x	
Ecuador		x				
El Salvador	x	x		x		
Guatemala	x		x			
Honduras			x			
Mexico	x	x	x	x		
Nicaragua	x	x	x			
Paraguay	x	x	x			
Peru	x					x
Dominican Republic	x	x	x		x	x
Venezuela (Bolivarian Rep. of)	x	x	x		x	

Source: Prepared by the author on the basis of Act No. 10.741 (2003) of Brazil; Act No. 1251 (2008), which provides for the issuance of regulations for the protection, promotion and defence of the rights of older adults in Colombia; Act No. 7935 (1999) of Costa Rica; Act No. 127 (1991) and amendments to the Older Persons' Act (2001) of Ecuador; Comprehensive Older Adult Assistance Act (2002) of El Salvador; Senior Citizens Protection Act, Decree No. 80 (1996), of Guatemala; Legislative Decree No. 199 (2006) Comprehensive Act on the Protection of Older Adults and Retirees of Honduras; Older Persons' Rights Act (2002) of Mexico; Older Adults Act (2010) of Nicaragua; Older Adults Act No. 1885 (2010) of Paraguay; Older Adults Act No. 28803 (2006) of Peru; Act No. 352-98 (1998) on the Protection of Ageing Persons of the Dominican Republic; and the Social Services Act (2005), of the Bolivarian Republic of Venezuela.

IV. The need for —and value of— an international convention on the rights of older persons

The development of specific standards related to the rights of the older persons in international and regional human rights instruments, as well as in the practice of human rights bodies and mechanisms, provides plenty of evidence of the existing international normative consensus regarding the minimum contents of the rights of the older persons. Yet, as further analyzed, no human rights convention of universal scope currently exists to systematize and operationalize these rights, and to establish a specific mechanism regarding their protection. This leaves an important gap in the international protection of the rights of the older persons (see box 5 for further details on the international conventions).

BOX 5

INTERNATIONAL CONVENTIONS ON HUMAN RIGHTS: BASIC CONCEPTS

What is a convention or treaty?

According to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, a treaty (also called a convention or covenant) is an “international agreement governed by international law and concluded in written form”. It may be concluded between one or more States and it is legally binding, which means that States which have signed and ratified the treaty —or acceded to it— must respect its provisions. In the case of the United Nations, a convention may involve the 192 States which currently make up its membership.

When is a treaty approved or adopted?

A treaty is adopted when it is put before the General Assembly of the United Nations for consideration and, unless there is consensus or agreement among all the countries, voted upon. The draft convention is thus officially finalized and open for signature or adherence by the countries.

(continued)

Box 5 (continued)

What does it mean to sign a treaty and what is a signatory State?

Signature is the formal act whereby a State, through its authorized representatives or a representative of the country delegated by them, signs a convention or treaty. In some countries, the president or minister for foreign affairs is authorized to sign, but they may delegate this power to the country's ambassador to the United Nations or another party. This formal act is very important, since it is a requirement for the process of treaty ratification to begin.

A “signatory State” is a country which has signed—but not yet ratified—a convention. A State which is a signatory has expressed its agreement with the thrust of the convention, will not willfully violate the convention and is interested in adhering to it as a State party in the future. A signatory country is not legally bound to fulfill the specific provisions of the convention, as a State party is.

What is ratification of a treaty?

“Ratification” is the international act so named whereby a State established on the international plane its consent to be bound by a treaty. This takes place when a country officially decides to be a State party to a convention. The actual process of ratification varies from one country to another, but it usually involves both the executive and legislative branches of government. The successful conclusion of this process indicates that the country has ratified the convention.

What is a “ratification instrument”?

Once a country has ratified a treaty, its minister for foreign affairs must prepare an official communication informing the Secretary-General of the United Nations that the State he or she represents has concluded the process established by its internal legislation and has thereby ratified the treaty. This official communication is what is understood by “ratification instrument”.

What is accession?

“Accession” is the procedure by which a country becomes a State party to a treaty or convention after it has entered into force. The effects are the same whether a country becomes a State party through accession or through ratification. No advantage or disadvantage attaches to this route to becoming a State party.

What is a State party?

This is a State which has consented to be bound by the treaty and for whom the treaty has entered into force. A State can become a party by ratifying the treaty—after signing it—or by acceding to it.

What is understood by the entry into force of a treaty?

This is the term used for the activation of a treaty, which means that State parties must begin to take measures to implement the obligations set forth in the convention. Conventions usually state the number of countries which must become States parties in order for the treaty to enter into force.

What is the oversight or monitoring of a treaty?

This includes any follow-up action taken to verify whether States parties to a treaty are taking the necessary measures to comply with the legal obligations set forth therein.

What are treaty oversight bodies and what do they do?

These bodies consist of a committee of independent experts, whose mandate and work is to oversee and monitor the implementation of a convention. Generally speaking, conventions on human rights establish the size of the oversight body, the criteria to be used in selecting its members, where and when it will meet and what it is authorized to do in the pursuit of its oversight work.

(continued)

Box 5 (concluded)

Committees of this sort receive reports from States parties on what has been done in the respective country to implement the obligations set forth in a particular convention or covenant. The Committee is usually empowered to ask questions on the report of the State party and to issue its opinion in response to the report. It may also be mandated to issue general comments on its interpretation of the treaty. Some committees may receive complaints from individuals or groups concerned that a State has violated its obligations under the convention. This faculty is usually established by means of an optional protocol.

Source: L. Astorga, *Por un mundo inclusivo y solidario: guía básica para utilizar y comprender mejor la Convención sobre los derechos para las personas con discapacidad*, San Jose, Inter-American Institute on Disability and Inclusive Development (IID)/Handicap Internacional, 2008.

It is from this perspective that the representatives of Latin American and Caribbean countries, as well as other ECLAC members and other stakeholders, come together to proclaim, in the Brasilia Declaration, their commitment to work towards the adoption of a United Nations convention on the rights of the older persons. This commitment is in line with the numerous recommendations from and proposals by experts and civil society organizations, and particularly older persons people organizations, to advance towards the same goal. These include, for instance, the recommendations of the Expert Group Meeting on the Rights of Older Persons, conveyed by the United Nations Program on Aging in 2009 (United Nations, 2009a), and the outcomes of other meetings held in the region and those organized by the Coordination of Regional Civil Society Organizations of Latin America and the Caribbean (CORV) in 2007 and 2009.

This recommendation has been further reinforced, as analyzed below in more detailed, by the preliminary study on the rights of the older persons prepared by the Human Rights Council Advisory Committee, at the Council's request. *Inter alia*, this study recommended, in line with the Brasilia Declaration, to jointly work towards the "establishment of an international convention on the rights of the older persons" (United Nations, 2009b, paragraph 63).

According to the Advisory Committee's study: "This convention should aim to change negative attitudes, increase the visibility of older persons, clarify responsibilities, improve accountability, and provide an international framework by which to protect older persons populations. It should not only codify the rights of older persons as internationally recognized principles, but it must also specify the obligations of member States to ensure the full protection of the rights of their older persons citizens. In particular, the convention should include responsibilities for States to strengthen the gender perspective in their legislative and policy actions on ageing" (United Nations, 2009b, paragraph 64).

A similar concern was expressed at the forty-eighth session of the Commission on Social Development, where the necessity of an international convention was discussed by Member States in the context of future action for the implementation of the Madrid Plan of Action. The Commission's discussion illustrated the existence of "considerable interest within the social community in further exploring the human rights dimensions of aging," (United Nations, 2009c, paragraph 27), including by the establishment of "a working group within the regular session for the Commission for Social Development, to further pursue discussions on the most appropriate ways and means of promoting and protecting human rights for older persons" (United Nations, 2009c, paragraph 28).

The commitment to work towards an international convention is further complementary with, and not contradictory to, ongoing initiatives taking place within the Inter-American and African regional systems to enhance their respective work of human rights protection with regard to the older persons, including the consideration of developing new regional standards.

A. Human rights: adapting to the effects of demographic change

The world population is ageing at a steady, quite spectacular rate. The total number of persons aged 60 and above rose from 700 million in 2009 and is projected to reach 2 billion by the year 2050 (United Nations, 2009d). In Latin America and the Caribbean —as a result of demographic transition— the population is ageing gradually but inexorably. The next few decades will see steady increases in both the proportion and the absolute number of people aged 60 and over.

In absolute terms, the number of people aged 60 and over will grow by 57 million between 2000 and 2025 (43 and 100 million respectively) and by 83 million between 2025 and 2050. This population group is growing at a faster pace than other younger groups (average annual growth rate of 3.4% between 2000 and 2025). The rate of change within this age group will be between three and five times higher than among the total population in the periods 2000-2025 and 2025-2050. As a result, the proportion of people aged 60 and over in the total population will triple between 2000 and 2050 (8.2 and 24% respectively).⁵²

These figures are illustrations of a quiet revolution, but one which has far-reaching and unpredictable consequences and which is now affecting the social and economic structures of societies both at the world level and at the country level, and will affect them even more in the future (United Nations, 1995a). In fact, a demographic transformation of such dimensions has far-reaching repercussions on society and public policy; and, in the next years, the ageing population will increase the demand for the effective exercise of human rights and fundamental freedoms at all ages.

B. Giving more visibility to ageing-related issues

Beyond the international legal obligations they entail vis-à-vis ratifying States, United Nations human rights conventions are important educational instruments in order to raise the awareness of all actors concerned, —including Member States, United Nations organizations and agencies, and civil society, regarding specific human rights issues. Many of the United Nations human rights conventions have explicitly incorporated provisions to this effect.

An international convention regarding the rights of the older persons would provide more visibility regarding the challenges that the older persons face in the effective enjoyment of their basic human rights. The adoption of such convention would represent a powerful pedagogic tool, particularly at the domestic level, contributing to combat prevailing stereotypes and generating positive and realistic images about the ageing process, as well as a wider awareness about the many contributions that the older persons make to society as a whole.

C. The need to clarify the contents of the rights of the older persons

Due to the existing plurality of normative sources, their different legal status, and their varied regional or material scope, there is an important level of dispersion concerning the minimum contents regarding the rights of the older persons in international human rights law. This normative dispersion involves important practical difficulties for duty-bearers, and particularly for States, which are ultimately responsible for the adoption of legislative measures and policies in order to promote older

⁵² For a more detailed overview the ageing process in the Latin America and The Caribbean, see generally CELADE (2009).

persons rights. This situation also affects rights-holders and other stakeholders, in as much as they play a substantive role in promoting the protection of and respect for those rights.

The adoption of an international convention would therefore contribute to clarifying and systematizing, in a single legally-binding instrument of universal scope, the contents of the existing and emerging international normative consensus regarding the rights of the older persons. The adoption of this instrument would also contribute to fill specific areas that are insufficiently covered by existing standards, including those included in United Nations human rights conventions and those developed by the practice of human rights bodies and mechanisms.

D. The existence of previous international instruments of non-conventional character

The typical pattern followed in the adoption of United Nations human rights conventions regarding specific rights or the rights of particular groups is the prior adoption by the General Assembly of a declaration. From a purely legal perspective, human rights declarations adopted by the General Assembly have, in principle, the same legal status as other human rights instruments adopted under other designations. Nevertheless, some of these designations, such as those of “declaration” or “proclamation,” seem to confer a particular political or normative solemnity to those resolutions.

While the General Assembly has not adopted a declaration on the rights of the older persons under such designation, it has however adopted a number of important resolutions in this regard, which clearly identify the older persons as specific group within society that face situations of particular vulnerability and define a minimum normative consensus regarding their rights. Consequently, these instruments fulfill already the function of a single declarative text regarding the rights of the older persons.

E. The need to clarify State obligations with respect to older persons

Even though the rights of the older persons have been progressively affirmed by a number of international and regional instruments with different normative status, as well as by the evolving practice of human rights mechanisms and bodies, the adoption of an international convention would significantly contribute to reinforcing the legal obligations to respect, promote and fulfill those rights.

The ratification of a human rights convention entails the obligations by State Parties to perform it in good faith, adopting such legislative and other measures as may be required in order to give effect to the rights affirmed therein. The adoption of legislative measures is particularly relevant in order to eliminate all regulations in domestic law that may result into formal or substantive discrimination against specific groups. Human rights conventions further include programmatic provisions, by virtue of which States undertake to take all required measures to achieve the full realization of human rights, both individually —to the maximum of its available resources— and through international economic and technical co-operation. Moreover, by ratifying a human rights convention, States commit to guarantee the respect of those rights by private actors acting within their respective jurisdictions.

Furthermore, it should be also noted that, beyond the specific legal obligations they create vis-à-vis State Parties; United Nations human rights conventions are also highly authoritative instruments that reflect the ethical commitment of these States. The ratification of these instruments thus represents a significant restatement by State Members of their pledge to fulfill the basic human rights principles enshrined in the United Nations Charter and in the Universal Declaration on Human Rights.

F. The need for strengthening international protection

The adoption of an international convention on the rights of the older persons would importantly intensify the international protection of those rights. Human rights treaties adopted by United Nations typically establish their own supervisory bodies and mechanisms. United Nations treaty bodies, made up of experts acting on their individual capacities, are mandated to oversee the effective implementation by States of their obligations under the respective conventions and to make recommendations in this regard.

Furthermore, the adoption of an international convention would have a cross-fertilization effect on other human rights bodies and mechanisms. United Nations treaty bodies, for instance, typically resort to other international and regional human rights standards in their authoritative interpretation of their respective instruments. The same holds true with relation to work of the Human Rights Council special procedures, including in areas of particular concern such as health, food, housing, violence against women, to name only a few. A similar cross-cutting effect could be seen with regards to regional human rights bodies and mechanisms, for which United Nations conventions constitute also important frameworks of reference.

Last but not least, the adoption and subsequent ratification of an international convention on this subject matter which also have an impact on the Human Rights Council's Universal Periodic Review (UPR), whose terms of reference are constituted by the "human rights obligations and commitments" of State Parties.⁵³ Therefore, the adoption of a legally-binding instrument regarding would open the UPR process to a specific focus on the rights of the older persons, further contributing to the strengthening of the international protection of those rights.

G. The need to promote a human rights-based approach to ageing policies

The adoption of a United Nations convention on the rights of the older persons would also be an instrument of particular relevance in order to further promote the incorporation of a rights-based approach to ageing policies, both at the international and the domestic level. Such convention would significantly contribute to fostering the "paradigm shift" reflected, *inter alia*, in the United Nations Principles for Older Persons, the Madrid Plan of Action and the WHO policy on active ageing, which seek to replace the historically predominant view of the older persons as "objects" of assistance to one in which these persons are genuinely seen "subjects" of rights. By the same token, a convention would significantly contribute to enhancing the effectiveness of other human rights instruments that have promoted this change of perspective.

The adoption of a convention would significantly help duty-bearers, including both States and civil society actors, in designing and implementing legal measures and policies from an older persons-rights perspective. This would particularly benefit States Parties to the future convention, but also, potentially, other States.

In addition, it is important to bear in mind that the United Nations human rights convention are closely associated to the work of economic and technical co-operation undertaken by United Nations bodies agencies, funds, and regional commissions, particularly in the field. Under the paradigm of the human rights-based approach to development, all these actors are engaged in supporting both duty-bearers and rights-holders in the effective implementation of human rights within their respective mandates. The adoption of a United Nations convention on the rights of the older persons would consequently enhance and guide the work that international organizations and bodies carry out on behalf of the older persons.

⁵³ Human Rights Council resolution 5/1: "Institution Building of the Human Rights Council" (18 June 2007), Annex: United Nations Human Rights Council: Institution-Building, para. 27(a).

V. Towards the basic contents of an international convention

The review of existing standards affirming the rights of the older persons facilitates the identification of a number of general areas that may be covered by a future United Nations convention, as well as the specific issues on which the international community has expressed a particular concern and common normative approach. This section presents synthesis, which does not pretend to be exhaustive, of the main content of the rights of older persons according to those standards, which does not pretend to be exhaustive, and which should be subject for further elaboration during the drafting process of an international convention regarding those rights.

A. The purpose and scope of a convention

A future convention should be designed to promote, protect and safeguard full enjoyment of human rights and fundamental freedoms for all older persons, on an equal footing with the rest of the population, and to promote respect for their inherent dignity.

The concept of “older person” to be used will certainly be widely debated. For the purposes of forming a regional position on the subject, however, an older person should ideally be considered to be a person aged 60 or over, although without excluding other broader categories which may be covered by national legislations.⁵⁴

⁵⁴ For example, the draft law on older persons in the Plurinational State of Bolivia affords preferential protection to those aged 60 and over, though it also includes those aged 55 and over.

B. General obligations

The responsibility for ensuring respect for human rights falls first and foremost upon the State (Quinn and Degener, 2002). In this regard, general obligations refer to the commitments States must assume in order to safeguard the human rights and fundamental freedoms of older persons, without discrimination of any kind.

This is very important, since it would be a mistake to think that the State's work ends when it has ratified a particular convention. In the great majority of cases, the content of a convention or treaty cannot be applied automatically, but must be processed through legislative, programmatic and institutional reform guided by the content of the treaty in order to provide a legal basis for the practical application in the country of the advances inherent in the international instrument in question (Astorga, 2008). Here, the basic steps the State needs to take must include the following:

- a) Adopt all legislative, administrative and other types of measures needed to ensure effective entitlement to the rights recognized in the respective convention, including the creation of rights protection networks.
- b) Refrain from any actions or practices that are incompatible with the convention and ensure that public authorities and institutions act in accordance with its provisions.
- c) Adopt measures to the full extent of the available public resources and, where necessary, in the framework of international cooperation, in order to fully realize the economic, social and cultural rights of older persons.
- d) Adopt appropriate legislative and other types of measures to prohibit all types of discrimination and violence against older persons and to establish sanctions for individuals, firms or organizations that engage in age-based discrimination.
- e) Adopt all legislative, budgetary, administrative and other types of measures needed to ensure equitable access to comprehensive and timely health services —including basic long-term medication which are of good quality and consistent with international human rights standards, and to enable the creation and implementation of necessary services.
- f) Afford differential treatment to older persons in policies and programmes, including those deployed during humanitarian emergencies (such as occur after natural disasters and during forced displacement), with due regard for their particular needs according to gender, ethnicity, area of residence and other traits.
- g) Adopt all legislative, budgetary, administrative and other types of measures needed to facilitate ageing in the community and to improve preventive measures for reducing vulnerability and dependence in old age.
- h) Include the concepts of life cycle, ageing and old age in academic curricula at all education levels, and encourage the creation of specialized technical and professional training programmes.
- i) Support capacity-building among academic establishments, scientific societies, and networks of cooperation on population, ageing and development issues for the preparation of studies on ageing and old age.
- j) Hold consultations and collaborate actively with older persons through their representative organizations, with a view to the preparation and implementation of legislation and policy for ensuring the convention's application at the national level, and regarding other matters pertaining to older persons.

C. The rights to be guaranteed

1. The right to equality and non-discrimination

A new convention on the rights of the older persons should reaffirm the basic principle of equality and non-discrimination on the basis of age, as explicitly recognized by international standards and human rights bodies. This further involves the adoption of ‘affirmative action’ or ‘special measures,’ allowing for the differential treatment of older persons; and ‘reasonable accommodation,’ allowing for adjusting general State regulations to the specific needs of the older persons (see box 6).

BOX 6 AFFIRMATIVE ACTION

International instruments and practice in the area of human rights expressly ratify the need for special measures or affirmative or positive action for specific groups. In particular, the Human Rights Council has stated in general terms that, *“the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination ... [I]n a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation”* (Human Rights Council, 1989).

A number of human rights instruments have in fact allowed or required affirmative action as an obligation upon States parties. These include instruments that have been ratified, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. Early on, affirmative action was seen as a temporary means of promoting substantive equality until it was achieved more solidly for different groups suffering discrimination on the basis of physical or mental causes, age or culture, but more recently the tendency has been to avoid imposing any time limit on affirmative action.

International and regional agencies, too, have explicitly included affirmative action in their policies and operating methods. For example, the policies of the European Union now recognize the need for such measures, in order to *“prevent or compensate for disadvantages and discrimination”, and to “promote substantive equality by taking into account the specific situation of members of disadvantaged groups and break the cycle of disadvantage associated with membership of a particular group”* (UNECE, 2009).

A more recent category than “affirmative action”, which was originally associated with labour and employment issues, is “reasonable accommodation”. Where work-related matters are concerned, this concept refers to any modification or accommodation of a labour practice or working environment that enables a person belonging to a particular socially discriminated group to perform the basic responsibilities and enjoy the benefits corresponding to a particular job. This idea was recently broadened to other areas by the Convention on the Rights of Persons with Disabilities, which defines reasonable accommodation as *“necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”* (United Nations, 2006).

Source: Luis Rodríguez-Piñero Royo, “Los desafíos de la protección internacional de los derechos humanos de las personas de edad”, Project documents, No. 305 (LC/W.305), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2010; United Nations Economic Commission for Europe (UNECE), *International Perspectives on Positive Action Measures: A Comparative Analysis in the European Union, Canada, the United States and South Africa*, Brussels, Office for Official Publications of the European Communities, 2009 and United Nations, Convention on the Rights of Persons with Disabilities (A/RES/61/106), New York, January 2007.

2. Awareness-raising

States, in cooperation with older persons people associations, educational institutions, means of communication, and other civil society actors, should adopt measures in order to raise awareness concerning the rights of the older persons. These measures may include

- a) The recognition of older persons' authority, wisdom, productivity and other important contributions to society;
- b) The promotion of a dignified and respectful treatment of the older persons;
- c) The promotion of a positive and realist image about ageing and the elimination of stereotypes.

3. Right to life and to a dignified death

A convention on the rights of older persons may reaffirm the inherent right to life of all human beings, and the need for States measures in order to guarantee the effective enjoyment of this right by the older persons. Existing or developing standards regarding the right to a dignified death include:

- a) The limitation of the imposition of the death penalty or life prison by reason of age;
- b) The right of access to palliative treatment in order ensure terminal or dying patients a dignified and painless death; and
- c) The prohibition of the abandonment of treatment or active euthanasia for financial reasons.

4. Right to physical, mental and emotional integrity, and to a dignified treatment

A clear international normative consensus exists with regards to the right of older persons to receive a dignified treatment and to not to be subject to abuse, an issue that was specifically addressed by WHO Toronto Declaration on the Global Prevention of Elder Abuse and by PAHO Plan of action on the health of older persons, including active and healthy ageing. A new convention on the rights of the older persons may cover, among other issues:

- a) the right of older persons to be free from any kind of physical, mental, emotional or financial abuse, exploitation and abandonment;
- b) States measures to prevent, stop and punish the responsible for those actions;
- c) the right of older persons not to be subject to torture or other cruel, inhuman or degrading treatment or punishment, or to medical or scientific experiments without their free, prior, and informed consent;
- d) the protection of the rights and dignity of older persons living in assistance institutions, both public and private, including through periodic visits to medical and psychiatric institutions; and
- e) the establishment of prevention and supervisory mechanisms, as well as the reinforcement of judicial mechanisms, in order to prevent interfamily violence against older persons.

5. Older persons in situation of detention or imprisonment

Existing human rights standards of universal or regional scope, including the United Nations Principles for Older Persons, the United Nations Standard Minimum Rules for non-custodial measures, and the IACHR Principles and Good Practices regarding the protection of persons deprived from liberty in the Americas, affirm the right of older persons deprived from liberty to a preferential treatment in penitentiary establishments, subject to the supervision by an independent and impartial judge or other competent authority. This preferential treatment includes measures allowing for:

- a) the separation of older persons men and women in different sections within penitentiary establishments;
- b) the provision of adequate provisions and services as required in order to meet the special needs of the older persons, particularly regarding their physical and mental health, and
- c) allowing access by older persons, without discrimination, to punishment measures other than the deprivation of liberty and other penitentiary benefits.

The Third Geneva Convention on international humanitarian law further includes a set of minimum standards regarding prisoners of war on account of their age.

6. Legal personality and capacity

Taken the United Nations Convention on disabilities as a model of reference, a convention on the rights of the older persons may:

- a) affirm the full rights and legal entitlement of these persons, on an equal footing with any other persons;
- b) recognize their entitlement to exercise their rights or otherwise bestow other persons with the necessary permissions to act on their behalf;
- c) prohibit limiting their legal capacity excepting after a judicial decision.

7. Right to participate in the social, cultural and political life of community

The active participation by the older persons in society in all political, economic, social, cultural and spiritual activities in the countries in which they live, according to their own capacities, needs, and preferences is one of the basic principles affirmed by the United Nations Principles on Older People and further reinforced by other instruments. The rights of the older persons to participate in the life of the community are affirmed in relation to:

- a) the right to participate actively in the formulation and implementation of legislative and policy measures directly affecting their rights, particularly with regard to ageing policies, social development and poverty-reduction strategies;
- b) the right to establish their own movements or associations, and to receive State supports through legal or financial measures;
- c) the promotion of participation by older persons in volunteer and in inter-generational activities; and
- d) the development of social, cultural or leisure programs and activities specifically designed for older persons, particularly those living in care institutions.

8. Right to an adequate standard of living and social services

A convention on the rights of the older persons should incorporate the minimum standards regarding the rights of these persons, as well as the obligations by States, international organizations and other actors, in relation to the various areas covered under the umbrella of the right to an adequate standard of living, as well as the basic tenets of the modern normative understanding regarding welfare and social policies in the context of old age. These basic tenets include:

- a) the adoption of an age-specific perspective into social services, promoting the preservation, to the maximum extent as possible, of their active functions;
- b) the facilitation to older persons of physical accessibility and transportation to social services;
- c) special protection to prevent poverty among the older persons;
- d) the promotion of volunteer activities in favor of these persons, particularly within care institutions.

9. Right to physical and mental health

Several instruments and policies, and particularly the Vienna and Madrid plans of action and the WHO policy on active ageing and PAHO Plan of action on the health of older persons, including active and healthy aging have already developed the special measures required to ensure the enjoyment of the right to health by the older persons. These include, among others:

- a) The recognition of the right to enjoy the highest possible level of physical and mental health, without discrimination, and with full respect of their dignity and autonomy.
- b) The recognition of the right to enjoy preventive and restorative health attention, particularly through primary care, including rehabilitation services.
- c) The promotion of their preferential access to medicines directed to aged-related illnesses.
- d) The promotion of and financial and technical support to home assistance, as well as intra-familial forms of care, including by training and periodic visits.
- e) Whenever the internment in care centers is unavoidable, States shall ensure that these persons enjoy an adequate standard of living and full respect of their human rights.
- f) The recognition of their right to provide their informed consent before any medical treatment or test, as well as before their internment in care centers.

10. Right to education and culture

As affirmed by international standards, older persons should enjoy the rights to education in both formal and informal institutions, within a paradigm of life-long learning. In addition, States should strive to take measures aiming at:

- a) the promotion of active policies oriented to fight against illiteracy, particularly among older women;
- b) the promotion of older persons' access to and active participation in cultural institutions and activities, including through volunteer activities.
- c) the promotion of educational programs allowing the older persons to transmit their knowledge, culture and spiritual values.

11. Right to housing and to a healthy environment

An important concern has also been raised by the international community regarding the housing conditions and specific needs of the older persons, as important factors contributing to their independence and health. Existing international standards affirm, in this regard:

- a) the right to enjoy an adequate housing, particularly in situations of crisis, emergency, displacement, or development-based evictions, and to be prioritized in the assignment of houses or land in those situations.
- b) the right to live in a secure and healthy environment, including access to clean water and air, and to be free from exposure to pollution.
- c) the right to remain in their own homes for as much time as possible, according to their own wishes and needs.

12. Rights at work

A fundamental area to be covered by an international convention on the rights of the older persons is labor. The international minimum consensus on this issue, as enshrined in the United Nations Principles for Older Persons and the Vienna Plan of Action, as well as in various ILO convention and recommendations, includes the recognition of:

- a) the right of older persons to work and have access to other income-generating activities;
- b) the right to equal treatment and opportunity, particularly with regards to access to equal remuneration, labor conditions, professional orientation and vocational training, and employment placement;
- c) the adoption of active employment policies that promote the participation or re-entry into the labor market by older workers;
- d) the right to freedom of association without discrimination based on age;
- e) the promotion of legal reforms and financial incentives in order to allow for the employment of older persons beyond the compulsory age of retirement, in accordance with their capacities, experience, and preferences, including such measures as the gradual reduction of the working day, part-time jobs, and flexible time;
- f) the diffusion of information about retirement rights and benefits, as well as of possibilities of other professional or volunteer activities.

13. Right to social security

International instruments prescribe, as a minimum standard, the right of older persons to benefit from social security and other form of social protection in case of retirement, old age, widowhood, disability and other cases of loss of their means of subsistence for involuntary reasons. States should further ensure, within their availability of resources, that older persons have access to those benefits when, in reaching the retirement age prescribed by national legislation, they are not entitled to retirement or other social security benefits.

The jurisprudence of human rights bodies have further contributed to elaborating upon some of these standards, including:

- a) the equality of retirement conditions for men and women;
- b) the proscription of the reduction of retirement benefits by subsequent State regulations;
- c) the State's duty to provide an "exceptional diligence" in responding to legal claims related to the provision of old age or widowhood benefits.

14. The rights of older women

The need to pay a particularized attention to situation and needs of older women is common to international instruments regarding the older persons, which have unmistakably taken a gender perspective. Particularly worth-mentioning in this regard are General Assembly resolutions 31/113, 49/162, and 58/177, as well as CEDAW Decision 26/III, referring specifically to the rights of older women. A new convention on the rights of the older persons should also reflect the existing commitment by the international community to

- a) eliminate all kinds of discrimination based on age and ensure the full recognition of and respect for the rights of older women;
- b) prevent all forms of violence against older women, including sexual violence
- c) abolish widow rites and other harmful traditional practices that may affect the integrity of older women;
- d) recognize the role that older women play in the political, social, economic and cultural development of their communities, and ensure their equal participation in design and implementation of plans at all levels, particularly in the rural milieu;
- e) ensure their access to social security and other measures of social protection, particularly when older women do not enjoy retirement benefits as a result of intra-familial work or other forms of informal occupation, and
- f) guarantee the rights to property and possession of older widows.

15. The rights of indigenous elders

As noted above, both the United Nations Declaration on the Rights of Indigenous Peoples and the draft American Declaration on the Rights of Indigenous People. These instruments:

- a) identify indigenous elders as specific groups within indigenous communities requiring of special protection in view of their special needs, particularly against all kind of violence against them.
- b) protect indigenous family systems, particularly the extended family, based on criteria of gender and generational equality.

VI. Measures for promoting an international convention on the human rights of older persons

A. Stakeholder engagement

1. Civil Society

Civil society, both at the international and a domestic level, has played a crucial role in promoting the current work to advance in the adoption of an international convention on the rights of older persons. Organizations representing these persons are to be particularly credited in this regard.

Recent human rights standard-setting initiatives at the United Nations level share with a common concern to involve civil society organizations in the processes of drafting and negotiation of those instruments. This is a clear recognition of the increasing role that these organizations play in the international promotion and protection of human rights, as well as the important expertise they have developed in this regard. By allowing direct civil society involvement, United Nations standard-setting processes have importantly contributed to the international mobilization of civil society, which has come together in order to contribute to those processes through the organization of specific-issue networks, while gaining a valuable knowledge on the functioning of international human rights bodies. Among civil society actors, United Nations has paid a particularized attention to the involvement of representative organizations of the groups specifically concerned by the standards under discussion, including families of persons with disabilities, disappeared persons, and indigenous peoples.

The pattern described above should also be taken into account regarding the international discussion of specific standards regarding the rights of the older persons, especially since civil society has played a key role, at both the national and international levels, in promoting the adoption of an international convention on the rights of older persons.

All institutional steps towards the adoption of an international convention in this realm should strive to promote the wide participation of civil society organizations, and particularly international organizations representing the older persons, organizations working in the promotion and protection of the rights of the older persons, as well as scientific and educational institutions active in this area. At

the same time, State Members should actively seek to incorporate these actors in the definition of their own positions and strategies regarding international-processes.

2. International and other inter-governmental bodies and agencies

As discussed, several United Nations international organizations, bodies, agencies and regional commissions, as well as inter-governmental agencies have taken the lead the international involvement in the promotion of the rights of the older persons, and, in a number of cases, they have further contributed to this promotion with the adoption of specific sets of standards and policies.

In line with the working methods of the former Commission on Human Rights, General Assembly resolution 60/251, establishing the mandate of the Human Rights Council, also provides for the participation of a consultation with specialized agencies and other inter-governmental organizations. State Members should ensure that the pertinent agencies and organizations and further actively involved in further discussions in this realm, including by contributing to the studies and other standard-setting related initiatives by the Human Rights Council.

Here, it is very important that Ibero-American intergovernmental agencies recognize the stakes the Latin American countries have developed in the establishment of an international convention on the rights of older persons. In particular, the Ibero-American intergovernmental technical cooperation network (RIICOTEC) is an instrument of cooperation for the implementation of comprehensive policies for older persons and those with disabilities in the countries of the Ibero-American community. The Ibero-American Social Security Organization (OISS) is an international specialized technical agency which works to promote economic and social well-being in the Ibero-American countries through coordination and the exchange of experiences concerning social security.

These two organizations have played a major role in coordinating action in benefit of older persons in the region. Accordingly, it is very important that, as well as providing technical cooperation, they embed the human rights approach deeply into their work and bolster the position of the Latin American countries in all the forums in which they engage.

3. National Human Rights Institutions

The Human Rights Council, in partnership with the Office of the United Nations High Commissioner on Human Rights, has promoted the involvement in international human rights institutions in international processes (NHRIs), including standard-setting processes. These institutions should also be naturally incorporated into the discussion concerning a future convention on the rights of the older persons, both at the international and at the domestic level.

From the perspective of Latin American States, a relevant organizational structure that could be further explored in this regard is the Federation of Ibero-American Ombudpersons (FIO). The FIO, whose governing council is integrated by the Ombudpersons of Latin American countries, Spain, and Portugal, promotes the discussion of human rights issues of particular concern for the region, including through the preparation of annual report and various training and information-sharing initiatives. The FIO could be thus a particularly useful structure in order to promote the further involvement of Latin American NHRIs in relation to the protection of the rights of older persons, including the work to advance towards the adoption of a United Nations convention.

B. Key forums for promoting the convention

1. Human Rights Council

The drafting and negotiation of a convention regarding the rights of the older persons would not represent the first standard-setting process to be driven by the Human Rights Council. In 2008, the Human Rights Council Advisory Committee started the process of discussion of a draft United Nations declaration on human rights education and training, as well as of a set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members, as mandated, respectively, by Human Rights Council resolutions 6/10 and 8/10.

Integrated by 18 members, the Advisory Committee acts as the ‘think tank’ of the Human Rights Council, taking over the functions of the former Sub-commission for the Protection and Promotion of Human Rights. However, in contrast with the Sub-commission, the Advisory Committee has not the authority to act upon its own initiative or to establish its own supervisory working groups.

In this context, the draft text of the declaration on human rights education is currently being prepared by a “drafting group” integrated by Advisory Committee experts,⁵⁵ while the principles and guidelines on discrimination against persons affected by leprosy is being prepared by an individual expert of to the committee.⁵⁶ After the Advisory Committee has completed its work in relation to the those instruments —or at least the United Nations draft declaration, the text would be expectedly subject to negotiation within an ad hoc Working Group of the Human Rights Council and, after the endorsement by the text of the Council’s plenary, forwarded to the General Assembly for adoption.

In 2009, at its third session, the Advisory Committee held a general discussion regarding the rights of the older persons as one of its new priority areas for its future work. In January 2010, Advisory Committee member Ms. Chunsung Chung presented a preliminary study entitled “The necessity of a human rights approach and effective United Nations mechanism for the human rights of the older persons.” As pointed out above, the study noted the absence of a single international instrument regarding the rights of the older persons and recommended the Human Rights Council to instruct the Advisory Committee “to conduct a full study on discrimination in the context of the human rights of older persons with consideration of the establishment of an international convention on the rights of the older persons.”⁵⁷

At its fourth session, the Advisory Committee took note of Ms. Chung’s preliminary study on the rights of the older persons and adopted a recommendation expressing the hope that the Human Rights Council would entrust the committee with the preparation of “a study on the application of older persons of existing United Nations human rights instruments and any possible gaps in the current legal framework.”⁵⁸

In response to the Advisory Committee’s additional study on the issue, Human Rights Council State Members, particularly those belonging to the Latin American and Caribbean region, may wish to instruct the committee to continue the consideration of the issue on its program of work, with a view to advance in the preparation of a draft text of an international convention regarding the rights of the older persons, as previously done already in relation to the issues of human rights education and leprosy.

⁵⁵ Human Rights Council Advisory Committee recommendation 1/1: “Drafting Group on human rights education and training: Programme of work” (5 August 2008).

⁵⁶ Human Rights Council Advisory Committee recommendation 1/5: “Elimination of discrimination against persons affected by leprosy and their family members” (7 August 2008).

⁵⁷ The necessity of a human rights approach and effective United Nations mechanism for the human rights of the older person, *supra*, at para. 65.

⁵⁸ Human Rights Council Advisory Committee recommendation 4/1; “Human rights and older persons” (29 January 2010, OP 1).

2. Commission for Social Development

The Commission for Social Development is a functional commission of the Economic and Social Council of the United Nations, which elects the Commission's 46 members for a four-year term as follows: 12 countries from among the African States, 9 from Latin America and the Caribbean, 10 from Asia, 5 from Eastern Europe and 10 from among the States of Western Europe and others.⁵⁹ The Commission examines matters pertaining to social development and makes recommendations in this connection. It meets once a year to take up key social development themes.

The Commission is the intergovernmental body responsible for follow-up to the Second World Assembly on Ageing, and since 2003 has included in its session, held in February each year, follow-up to the implementation of the Madrid International Plan of Action on Ageing.

In February 2008, the recommendations of the Brasilia Declaration in the area of human rights were discussed at the forty-sixth session of the Commission for Social Development. On that occasion, the Government of Brazil invited all the countries and social sectors to give serious consideration to suggestions to formulate a convention on the rights of older persons, and to appoint a special rapporteur on the issue.⁶⁰

The delegation of Chile drew attention to the agreements enshrined in the Brasilia Declaration with regard to human rights and noted that pending challenges for the country included, in particular, the dissemination throughout society of standards on basic human rights and fundamental freedoms of older persons, and the continuation of progress towards empowering older persons.⁶¹

The delegation of the Dominican Republic, on behalf of the Rio Group—which also comprises Argentina, Belize, the Bolivarian Republic of Venezuela, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Plurinational State of Bolivia and Uruguay—made a similar point in its statement: “We are convinced that the enjoyment of all human rights and fundamental freedoms of older persons, including respect for their dignity and the elimination of all forms of discrimination, neglect, abuse and violence against them are essential for their integral well-being.”⁶²

The countries of the region referred again to the agreements of the Brasilia Declaration in their statements at the forty-seventh session of the Commission, held in New York in 2009. The Permanent Representative of Brazil to the United Nations emphasized once more the Declaration's contribution in the area of human rights and urged the countries to continue moving towards the preparation of a legally binding instrument for protecting the rights of older persons, and to assess the possibility of appointing a special rapporteur for older persons.⁶³

In a similar vein, the delegation of Argentina noted that although the main international human rights instruments formulated under the auspices of the United Nations, owing to their universal nature, implicitly recognized the rights of the older members of a society, there was no international treaty specifically ratifying the issue of older persons.⁶⁴

Ongoing discussions within the Commission for Social Development regarding the necessity to strengthen the international protection of the rights of older persons within the implementation Madrid Plan of Action include the possibility of establishment of an inter-sessional working group “to further pursue discussions on the most appropriate ways and means of promoting and protecting

⁵⁹ See [online] www.un.org/esa/socdev/csd/2010/documents/membership2010.pdf.

⁶⁰ Statement by the delegation of Brazil, forty-sixth session of the Commission for Social Development, 8 February 2008.

⁶¹ Statement by the delegation of Chile, forty-sixth session of the Commission for Social Development, 11 February 2008.

⁶² Statement by the Permanent Mission of the Dominican Republic to the United Nations on behalf of the Rio Group, forty-sixth session of the Commission for Social Development, 7 February 2008.

⁶³ Statement by the delegation of Brazil, forty-seventh session of the Commission for Social Development, 4 February 2009.

⁶⁴ Statement by the delegation of Argentina, forty-seventh session of the Commission for Social Development, 6 February 2009.

human rights for older persons.”⁶⁵ Member States could also follow-up on this important initiative in order to contribute to further consensus-building within the Commission regarding the need for an international convention on the rights of older persons, and transmit the Commission’s input to ongoing standard-setting initiatives at the Human Rights Council.

In its statement on behalf of the members and associate members of MERCOSUR —Argentina, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, the Plurinational State of Bolivia and Uruguay— Argentina issued a call to promote an international convention on the rights of older persons under the auspices of the United Nations, urged the countries to redouble their efforts to this end and invited all the States Members of the United Nations to join this initiative (see box 7).

In this framework, it is extremely important to conduct follow-up to the discussions held in the Commission for Social Development concerning the need for an international convention on the rights of older persons, in order to move towards a broader consensus on the importance of creating such an instrument.

BOX 7
STATEMENT MADE ON BEHALF OF MERCOSUR
TO THE COMMISSION FOR SOCIAL DEVELOPMENT, 2010

In her statement on behalf of MERCOSUR to the Commission for Social Development concerning item 3 (b) “Review of relevant United Nations plans and programmes pertaining to the situation of social groups”, Dr. Mónica Roqué, National Director of Policies for Older Adults of the Secretariat for Children’s, Adolescent and Family Affairs of Argentina, said on 5 February 2010:

*“There is no legally binding instrument to standardize and protect the rights of older persons. Persuaded that we need to put an end to this situation, the Heads of State of MERCOSUR, in the recent thirty-sixth meeting of the Common Market Council, committed themselves, within the framework of the United Nations, to call for an **International Convention on the rights of older persons**, with the goal to provide them with a legally binding instrument to standardize their rights and to establish mechanisms and organs to ensure them, since this is a vulnerable sector of the population who are subjected to discriminatory practices and treatment.*

***Mr. Chairman**, the Report presented by the Secretary-General on the follow-up of the Madrid Plan of Action offers us an excellent picture of a highly representative sample of States Members of the United Nations, who in an overwhelming majority have offered a positive and constructive view to continue strengthening the promotion and protection of the well-being and human rights of older persons, by exploring new paths and new mechanisms to guarantee their dignity and rights.*

*The Second Regional Conference on Ageing in Latin America and the Caribbean launched in 2007 a regional strategy for the implementation of the Madrid Plan of Action with the **Brasilia Declaration**, which initiated, among other measures, a consultation process towards the preparation of a convention on the human rights of older persons. This process has continued with decisive follow-up meetings, which took place in September 2008, in Rio de Janeiro, in May 2009 in Buenos Aires and, more recently, in October 2010 in Santiago, Chile. This last meeting was attended by over 250 persons from several regions, representing governments, organizations of older persons, international organizations and specialized agencies. It is clear how dynamic the process is in the region in the search for new mechanisms that guarantee the human rights of older adults.*

(continued)

⁶⁵ Further implementation of the Madrid International Plan of Action on Ageing, 2002, E/CN.5/2010/4 (25 November 2009), at para 28.

Box 7 (concluded)

*We invite the States Members of the United Nations that have not yet expressed their position on this issue to strengthen their internal processes of participative dialogue, analysis and reflection, in order to move forward in this framework towards an **International Convention on the rights of older persons** that must offer this valuable sector of our society the urgent and effective answers they deserve”.*

Source: Permanent Mission of Argentina to the United Nations, “Temas sociales 2010”, <http://www.un.org/esa/socdev/csd/2010/statements/govts/Argentina3b.pdf>.

3. ECLAC

At the meeting of the Ad Hoc Committee on Population and Development held on 12-14 May 2010 in Santiago, and in follow-up to a request made by the countries attending the third follow-up meeting to the Brasilia Declaration held in October 2009, ECLAC presented a proposal giving a general overview of human rights relevant to ageing issues and of the factors that justified the adoption of an international convention. The proposal identified the main contents a legally binding instrument should have from the point of view of Latin America and the Caribbean, and set before the governments an overall strategy of work for promoting the creation of an international convention.

As one of the outcomes of that meeting, the Committee agreed to continue advancing towards the preparation of an international convention on the human rights of older persons and requested ECLAC to carry out two key actions in support of this. First, to convey to the Secretary-General of the United Nations the desire of the countries that a working group be established to spearhead the preparation of an international accord to protect the rights of older persons and, second, to organize a regional meeting in the framework of the second review and appraisal of the Madrid International Plan of Action on Ageing.

Further to these agreements, which were ratified in resolution 657 adopted by ECLAC at its thirty-third session, held in Brasilia in 2010, the Executive Secretary of the Commission conveyed the interest of the countries of the region in setting up a working group. It is now a matter for the countries to follow up on that communication. In this connection, Ambassador Jorge Argüello, Permanent Representative of Argentina to the United Nations, said at the commemoration of the International Day of Older Persons, held in New York on 7 October 2010: “I want to share with you a very important step that has been given last Tuesday, when the Group of 77, which includes 133 developing countries in the world and China, have officially presented a draft resolution to the United Nations calling for the establishing of a working group of the United Nations to consider a Convention on the rights of older persons. This is a first step, and there is still a long way to go to secure the support of all 192 States members. Argentina, as the chair of the Group of 77 and China in 2011, will continue to spearhead this process”⁶⁶.

ECLAC Member States, through the Committee on Population and Development, should continue engaged with the follow-up of the Brasilia Declaration as part of their wider efforts towards the implementation of the Madrid Plan of Action at the regional level. At the same time, working relationships between national focal points and ECLAC should be continued and strengthened in order to continue the exchange of best practices and awareness-raising activities regarding the protection of older persons and the design of common strategies to be followed towards the adoption of an international convention in this realm, in cooperation between other relevant Government sectors, including Ministries of Foreign Affairs.

Member States could also incorporate the work towards the adoption on an international convention on the rights of older persons as part of the regional preparatory activities of the Madrid Plan of Action second review and appraisal exercise.

⁶⁶ See [online] <http://www.un.org/ageing/documents/IDOP/2010/keynote_closing_remarks.pdf>.

C. Measures complementing the dynamics of an international convention

1. The establishment of a Special Rapporteur of the Human Rights Council

The Brasilia Declaration also calls upon State Members to promote the establishment, within the Human Rights Council's special procedures, of the mandate a Special Rapporteur on the rights of the older persons (ECLAC, 2008). In addition to many other important benefits that it may imply for the international protection of the rights of these persons, a thematic mandate regarding the older persons may also play a relevant role in advancing towards the adoption of an international instrument in this regard.

In the absence of specific human rights instruments and mechanisms, United Nations special procedures play particular relevant role in attending human rights issues or the rights of specific groups that are not sufficiently covered by existing instruments, as well as in the systematization of existing standards. This is the case, for instance, of the Human Rights Council Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises, which is currently mandated to elaborate further on the content and scope of corporate responsibility to respect human rights and State duties in this regard.⁶⁷ Similarly, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was also mandated to contribute to the drafting of the 2007 United Nations Declaration on the Rights of Indigenous Peoples.⁶⁸ While not formally part of the special procedures machinery, the Special Rapporteur on disability of the Commission for Social Development played also a major contributing role in the process of drafting and adoption of the United Nations Convention on the Rights of Persons with Disabilities.⁶⁹

The procedure to establish the mandate of a Special Rapporteur on the rights of older persons involves its adoption, generally by consensus, by the Human Rights Council. The Council has set a number of criteria concerning the creation of new thematic mandates. These include, but are not restricted to, the following: (a) increased level of human rights protection and promotion; (b) equal attention to all human rights, civil, political, economic, social and cultural, including the right to development; (c) avoidance of unnecessary duplication; (d) avoidance of ambiguity.⁷⁰ These criteria are met in relation to the specific issue of the rights of older persons (Rodríguez-Piñero, 2010).

The Human Rights Council's first resolution on a new mandate typically designates the mandate holder for an initial period of three years, subject to a renovation for a period of other additional three years. The procedure for appointment of mandate-holders is based on a threefold mechanism. First, nomination by Governments, international and non-governmental organizations, other human rights bodies or self-nominations for inclusion in a public list of eligible candidates.

⁶⁷ Human Rights Council Resolution 8/7: "Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises" (18 June 2008).

⁶⁸ Human Rights Council Resolution 6/12: Human rights and indigenous peoples: mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (28 September 2007).

⁶⁹ The Special Rapporteur on disability was established as the monitoring mechanism on the implementation of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly resolution 48/96 of 20 December 1993, Annex, Ch. IV. The Special Rapporteur by subsequently entrusted by the General Assembly to contribute to the work of the Ad Hoc Committee responsible for the negotiation and drafting of the text of the future Convention on Persons with Disabilities. See General Assembly resolution 56/168 of 19 December 2001: "Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities," para. 3.

⁷⁰ United Nations Human Rights Council: Institution-building, *supra*, at para. 58.

Second, selection of a shortlist by a consultative group integrated by representatives of the United Nations regional groups. And third, appointment by the President of the Human Rights Council.⁷¹

A Special Rapporteur on the rights of the older persons could play a very similar role, further contributing to ongoing initiatives at the Advisory Committee and at other international and regional fora, promoting the exchange of experiences and good practices, and operationalising the existing international consensus regarding those rights, while also contributing to fill the international gap regarding the protection of these persons (Rodríguez-Piñero Royo, 2010).

⁷¹ United Nations Human Rights Council: Institution-building, *supra*, at paras. 39-53.

VII. Conclusions

1. Old age has traditionally been viewed as a stage of life marked by lacks of all kinds: economic, physical and social. Older persons have rarely been seen as individuals capable of contributing to society and to their families. “Burden” is still the term most commonly used in economic or social approaches when referring to this stage of life. The adoption of a human-rights-based approach to analysing and interpreting age-related issues represents a paradigm shift, to which the United Nations has made an enormous contribution through the establishment of principles in favour of older persons, the celebration of the International Year of Older Persons and the holding of two world assemblies on ageing.
2. The human rights approach offers great advantages for ageing issues, by affording fairer treatment of the problems and needs of older persons. Basically, it places the accepted conceptual framework within international law, which offers a coherent system of principles and rules for public policies. It can underpin the creation of accountability mechanisms, the promotion of equality and non-discrimination, the participation and empowerment of excluded groups and the progressive realization of their rights.
3. The opportunities for older persons are clear. First, they cease to be viewed simply as passive subjects and instead become active participants in a scenario in which their differences are respected and their full inclusion encouraged. They can benefit from a broader range of policies —not only those that focus on economic need— of which the most important are affirmative measures for achieving full equality and exercise of their rights.
4. There is no legally binding instrument to protect the rights of older persons, however, such as exists in the case of other groups that suffer discrimination. To ensure that older persons are able to exercise their entitlements, therefore, it is first necessary to address the huge dispersion in standards both within the United Nations and in the Inter-American system. Nevertheless, an international consensus is certainly emerging around the issue of older persons’ rights, as evidenced by the wide variety of rules which, regardless of their legal status, implicitly form a rights threshold which must be guaranteed. At the same time, the treaty oversight bodies —especially those of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of

Discrimination Against Women— have done much to interpret human rights in the context of ageing (through General Comment No. 6 of the ICESCR Committee and General Recommendation No. 27 of the Committee on the Elimination of Discrimination against Women, which was adopted in October 2010).

5. Regional and national standards and policies are also a rich source of content for building a human rights approach to public policies on ageing. The Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing, the Brasilia Declaration, and the Plan of Action on the Health of Older Persons, Including Active and Healthy Aging, are good examples. There are also constitutional guarantees and specific standards of protection for older persons' rights in place in 13 Latin American countries: the Bolivarian Republic of Venezuela, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Peru. Together, these speak of a growing consensus on the need to afford broader and more systematic protection to the rights of older persons.
6. Despite this consensus, the lack of a specific convention on the rights of older persons often limits the extent to which they can really be protected. For one thing, there is no coherent set of guiding principles by which to steer a course of action. For another, the human rights principles applied to the situation of older persons are not sufficiently specific. This creates enormous difficulties for work in the interests of older persons and the violation of their rights arises more often from lack of awareness than from wilful violation of obligations. A convention that protects people's rights in old age would be a valuable tool for awareness-raising and education about human rights, as well as for promoting and exercising them.
7. The raw materials for assembling the contents of an international convention on the rights of older persons are already available in existing standards. Annex 3 of this document lists over 90 international sources which make reference to the rights of older persons. A similar exercise, set out in annex 4, has been carried out with respect to the national legislations of the Latin American countries. Despite this proliferation of standards, however, many aspects of the life of older persons—including areas which are particularly vulnerable to human rights violations— remain completely unprotected. A much more comprehensive process of discussion, analysis and proposal is needed here to arrive at a more specific construct of rights in old age, including the consideration of particular groupings within the older population, such as indigenous elders, older women and older persons in prison.
8. Work on the rights of older persons is going on in a number of spheres today, including the Human Rights Council, the Commission for Social Development and ECLAC. It is extremely important to keep the issue on the agendas of these bodies and to avoid it losing momentum. The experience of the Latin American and the Caribbean countries with the holding of meetings in follow-up to the Brasilia Declaration has been very useful for unifying positions and clarifying scenarios in relation to ageing issues. It has also had impacts on different forums within the United Nations and in the Inter-American sphere.
9. Treaties which are negotiated through consensus have greater force when finally adopted and facilitate subsequent ratification by States. Here, it is necessary to: (i) strengthen negotiation between the countries of the region and between these countries and extraregional partners. For this, working meetings should continue to take place, in order to consider the convention at the subregional and national levels, foster theoretical discussion and encourage States to adopt positions; (ii) strengthen the civil society and older persons' movements as drivers of the convention. The last treaty adopted within the framework of the United Nations was negotiated with broad participation by civil society (“Nothing about us without us”); and (iii)

find ways of encouraging States to support the lobby for a convention, by having national departments on ageing affairs provide training on human rights and on the process of international treaty adoption, by training civil society leaders, and by engaging civil society stakeholders and governments in mutual capacity-building.

Bibliography

- Abramovich, V. (2004), “Una aproximación al enfoque de derechos en las estrategias y políticas de desarrollo de América Latina”, document prepared for the meeting Rights and development in Latin America: a working seminar, Santiago, Chile, 9 - 10 December.
- Abramovich, V. and C. Courtis (2006), *El umbral de la ciudadanía: el significado de los derechos sociales en el Estado social constitucional*, Buenos Aires, Editores del Puerto.
- Arber, S. and J. Ginn (1995), *Relación entre género y envejecimiento. Enfoque sociológico*, Madrid, Narcea.
- Astorga, L. (2008), *Por un mundo inclusivo y solidario: guía básica para utilizar y comprender mejor la Convención sobre los derechos para las personas con discapacidad*, San Jose, Inter-American Institute on Disability and Inclusive Development (IID)/Handicap Internacional.
- Bury, M. (1995) “Envejecimiento, género y teoría sociológica”, *Relación entre género y envejecimiento. Enfoque sociológico*, S. Arber and J. Ginn, Madrid, Narcea.
- Castells, M. (1992), *Análisis de las políticas de vejez en España en el contexto europeo*, Madrid, Ministry of Social Affairs, Institute of Social Services.
- CEDAW (Committee on the Elimination of Discrimination against Women) (2009), “Concept note on the draft general recommendation on older women and protection of their human rights” (CEDAW/C/2009/II/WP.1/R), May.
- CELADE (Latin American and Caribbean Demographic Centre - Population Division of ECLAC) (2009), *El envejecimiento y las personas de edad. Indicadores sociodemográficos para América Latina y el Caribe* (LC/L.2987/REV1), Santiago, Chile.
- Chesnais, Jean Claude (1990), “El proceso de envejecimiento de la población”, series E, No. 35 (LC/DEM/G.87), Santiago, Chile, Economic Commission for Latin America and the Caribbean (ECLAC).
- Comisión Nacional para el Adulto Mayor (1995), *Informe Comisión Nacional para el Adulto Mayor*, Santiago, Chile.
- Courtis, C. (2004), “Discapacidad e inclusión social: retos teóricos y desafíos prácticos. Algunos comentarios a partir de la Ley 51/2003”, *Jueces para la democracia*, No. 51.
- ECLAC (Economic Commission for Latin America and the Caribbean) (2008), *Brasilia Declaration* (LC/G.2359), Santiago, Chile.

- _____ (2006), *Shaping the Future of Social Protection: Access, Financing and Solidarity* [C/G.2294 (SES.31/3)] Santiago, Chile, March.
- _____ (2004), *Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing* (LC/G.2228), Santiago, Chile.
- Elder, Ch. and R. Cobb (1993), “Formación de la agenda. El caso de la política de ancianos”, *Problemas públicos y agenda de gobierno*, L. Aguilar, Mexico City, Miguel Ángel Porrúa.
- Ericsson, E. (1985), *El ciclo de vida completado*, Buenos Aires, Paidós.
- Estes, C. (1986), *The Aging Enterprise*, San Francisco, Jossey-Bass.
- Etxeberria, X. (2008), *La condición de ciudadanía de las personas con discapacidad intelectual*, Bilbao, Universidad de Deusto.
- Fericgla, J. (1992), *Envejecer. Una antropología de la ancianidad*, Barcelona, Anthropos.
- Guendel, Ludwig (2000), *La política pública y la ciudadanía desde el enfoque de los derechos humanos: la búsqueda de una nueva utopía*, San Jose, Latin American Faculty of Social Sciences(FLACSO)/United Nations Children’s Fund (UNICEF)/University of Costa Rica.
- Ham Chande, R. (1996), “El envejecimiento. Una nueva dimensión de la salud en México”, *Revista de salud pública*, Mexico City.
- Huenchuan, S. (2010), “Envejecimiento y género: acercamiento a la situación específica de las mujeres mayores en América Latina y de las recomendaciones internacionales”, document presented at the Regional symposium of experts on ageing, gender and public policies, Universidad de la República/United Nations Population Fund (UNFPA), Montevideo, 9- 10 September.
- _____ (ed.) (2009), “Aging, human rights and public policy”, *Libros de la CEPAL*, No. 100 (LC/G.2389-P), Santiago, Chile, Economic Commission for Latin America and the Caribbean (ECLAC). United Nations publication, Sales No. E.08.II.G.94.
- _____ (2004), “Marco legal y de políticas a favor de las personas mayores en América Latina”, *Población y desarrollo series*, No. 51 (LC/L.2115-P), Santiago, Chile, Economic Commission for Latin America and the Caribbean (ECLAC). United Nations publication, Sales No. S.04.II.G.44.
- _____ (2003), “Diferencias sociales en la vejez. Aproximaciones conceptuales y teóricas”, *Revista de trabajo social perspectivas: notas sobre intervención y acción social*, No. 12, Santiago, Chile, Universidad Católica Cardenal Raúl Silva Henríquez.
- _____ (1999), “Vejez, género y etnia. Acercamiento a un enfoque de las diferencias sociales”, *Revista de educación y humanidades*, No. 78, Temuco, Faculty of Education and Humanity, Universidad de La Frontera.
- Human Rights Council (2007), Resolution 5/1 “Institution Building of the Human Rights Council”, 18 June.
- Jaspers, Dirk (2010), “Elementos para la justificación de una convención sobre los derechos humanos de las personas mayores”, document presented at the Special Session of the Permanent Council on Human Rights and Older Persons, Organization of American States (OAS), 28 October.
- McMullin, J. (1995), “Teoría de las relaciones de género y edad”, S. Arber and J. Ginn, *Relación entre género y envejecimiento. Enfoque sociológico*, Madrid, Narcea.
- Montes de Oca, V. (1994), “Envejecimiento y modernidad. Impactos demográficos”, *Nueva sociedad*, No. 129, Caracas.
- Mouzelis, N. (1991), *Back to Sociological theory*, London, Mc Millan.
- OAS (Organization of American States) (2009), “Human Rights and Older Persons”, Resolution AG/RES. 2455 (XXXIX-O/09), General Assembly, 4 June.
- OHCHR (Office of the United Nations High Commissioner for Human Rights) (2004), *Human Rights and Poverty Reduction. A Conceptual Framework* (HR/PUB/04/1), New York, United Nations.
- PAHO (Pan American Health Organization) (2009), *Plan of Action on the Health of Older Persons, Including Active and Healthy Aging* (CE144.R13), May.
- _____ (2002), “Health and Aging” (CSP26/13), Washington, D.C, 10 July.
- MIDES (Ministry of Social Development, Panama) (2010), Report of Panama at the session “Protección jurídica en materia de envejecimiento: momento actual y proyección futura”,

- document presented at the tenth Riicotec conference “De la necesidad a los derechos en las políticas públicas de discapacidad y envejecimiento”, Asunción, 22- 24 September.
- Papalia, D. and S. Wendkos (1998), *Desarrollo humano*, Bogota, Limusa.
- Quinn, G.M. and T. Deneger (2002), *The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, New York, United Nations.
- Redondo, N. (1990), *Ancianidad y pobreza. Una investigación en sectores populares urbanos*, Buenos Aires, Hvmánitas.
- Rodríguez-Piñero, Luis (2010), “Los desafíos de la protección internacional de los derechos humanos de las personas de edad”, *Project documents*, No. 305 (LC/W.305), Santiago, Chile, Economic Commission for Latin America and the Caribbean (ECLAC).
- Romieux, M. (1998), “La educación para el adulto mayor y su relación con la sociedad”, *Revista enfoques educacionales*, vol. 1, No. 1, Santiago, Chile.
- Roqué, M. (2010), Report of Argentina at the session “Protección jurídica en materia de envejecimiento: momento actual y proyección futura”, document presented at the tenth Riicotec conference “De la necesidad a los derechos en las políticas públicas de discapacidad y envejecimiento”, Asunción, 22- 24 September.
- Sidorenko, A. (2008), *International Action on ageing: human rights dimension*, New York, Association of American Law Schools, Annual Meeting, January 2-6.
- UNECE (United Nations Economic Commission for Europe) (2009), *International Perspectives on Positive Action Measures: A Comparative Analysis in the European Union, Canada, the United States and South Africa*, Brussels, Office for Official Publications of the European Communities.
- _____ (2007), Leon Ministerial Declaration: “A society for all ages: challenges and opportunities” (ECE/AC.30/2007/2), 28 January.
- _____ (2002), Berlin Ministerial Declaration: “A society for all ages in the UNECE region” (ECE/AC.23/2002/3/Rev.2), 11 September.
- United Nations (2009a), “Recommendation 3”, Report of the Expert Group Meeting Rights of Older Persons <http://www.un.org/esa/socdev/ageing/documents/egm/bonn09/report.pdf>.
- _____ (2009b), *The necessity of a human rights approach and effective United Nations mechanism for the human rights of the older person* (A/HRC/AC/4/CRP.1), Geneva.
- _____ (2009c), Further implementation of the Madrid International Plan of Action on Ageing, 2002. Report of the Secretary-General (E/CN.5/2010/4) 25 November.
- _____ (2009d), *World Population Ageing* (ESA/P/WP/212), New York, December.
- _____ (2007a), Convention on the Rights of Persons with Disabilities (A/RES/61/106), New York, January.
- _____ (2002), Madrid International Plan of Action on Ageing, adopted at the Second World Assembly on Ageing, Madrid, from 8 to 12 April.
- _____ (1995a), The economic, social and cultural rights of older persons, General Comment, No. 6 (E/C.12/1995/16/Rev.1), Geneva, Committee on Economic, Social and Cultural Rights.
- _____ (1995b), Report of the World Summit for Social Development (A./CONF.166/9), Copenhagen.
- _____ (1991), Resolution 46/91 “Implementation of the International Plan of Action on Ageing and related activities”, 16 December.
- Vásquez, J. (2004), “Discriminación y violencia en la vejez: mecanismos legales e instrumentos internacionales para la protección de los derechos en la edad avanzada”, document presented at Meeting of Experts on Ageing - Second Central American and Caribbean Forum on Policies for Older Persons, San Salvador, November.
- Vellas, P. (1996), “Envejecer exitosamente: concebir el proceso de envejecimiento con una mirada más positiva”, *Revista de salud pública*, México.
- WHO (World Health Organization) (2002), *Active Aging: A Policy Framework* (WHO/NMH/NPH/02.8), Geneva.

Annexes

Annex 1

Brasilia Declaration

We, the representatives of the countries gathered in Brasilia, Brazil, from 4 to 6 December 2007 at the Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean: towards a society for all ages and rights-based social protection,

With the purpose of identifying the future priorities for application of the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing, responding to the opportunities and challenges posed by the ageing of the population in the coming decades and promoting a society for all ages,

Underscoring the responsibility of Governments, subject to their legal frameworks, to promote and provide basic social and health-care services and facilitate access to them, bearing in mind the specific needs of older persons and the agreements assumed in this document,

With the firm determination to adopt measures at all levels —local, national, subregional and regional— in the Regional Strategy’s three priority areas: older persons and development; promotion of health and well-being into old age, and creation of enabling and supportive environments,

Recognizing that ageing is one of humanity’s greatest achievements, that in Latin America and the Caribbean the population has been ageing unevenly and that the process is more advanced in some countries than in others, as a result of which the challenges for the State in terms of finding appropriate responses to the changes in the age structure of the population are different,

Bearing in mind that a demographic transformation of such dimensions has far-reaching repercussions on society and public policy and that ageing increases the demand for the effective exercise of human rights and fundamental freedoms at all ages,

Highlighting the fact that in order to confront the challenges of ageing, some countries have pressed ahead with the creation and implementation of legislation, policies, programmes, plans and services to improve the living conditions of older persons and that, in comparison with the year 2003, there are new public-policy niches and more interventions in this matter, although situations and achievements still vary considerably from one country, or one subregion, to another,

Underscoring the fact that States have, for some years, been becoming increasingly concerned about the rights of older persons and that this has translated into the creation of legal protection frameworks, although gaps persist in the implementation of such rights and many older persons still lack access to social-security, health or social-service benefits,

Emphasizing that population ageing must not be treated as a matter of relevance only to the current generations of older persons and that it is fundamental to advance towards the construction of more inclusive, cohesive and democratic societies which abhor all forms of discrimination, including age-based discrimination, and to strengthen mechanisms that promote solidarity between generations,

Bearing in mind that ageing can generate disabilities and dependency, which call for comprehensive care services,

Recognizing that the United Nations and its specialized agencies have placed special emphasis on this issue and have stressed the need to expand the coverage and quality of social protection systems in order to protect persons against age-associated risks; and that entitlement to human rights signifies that the subject effectively belongs to the society, since it implies that all citizens, men and women alike, are included in the development dynamic and can enjoy the well-being that it promotes,

Recognizing also the systematic work carried out by the Economic Commission for Latin America and the Caribbean, through the Latin American and Caribbean Demographic Centre–Population Division of the Commission in support of countries in the region that seek to incorporate ageing into their development agendas and to promote opportunities for strengthening technical skills, research and technical assistance to Governments, and expressing appreciation for the support provided by the United Nations Population Fund, the Pan American Health Organization, the International Labour Organization and the Inter-American Development Bank as well as the Ibero-American Intergovernmental Network for Technical Cooperation and the Ibero-American Social Security Organization,

Taking note of the San Salvador Declaration, which was adopted by the First Ladies, Spouses and Representatives of Heads of State and Government of the Americas at the fourteenth conference on the issue “Building a society for all ages”,

Having considered the Report on the Application of the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing, prepared by the secretariat of the Economic Commission for Latin America and the Caribbean,⁷²

1. *Reaffirm* our commitment to spare no effort to promote and protect the human rights and fundamental freedoms of all older persons, to work to eradicate all forms of discrimination and violence and to create networks for the protection of older persons with a view to the effective exercise of their rights;
2. *Promote* dialogue and strategic alliances between Governments, the United Nations system, international and South-South cooperation, civil society—with special emphasis on organizations of older persons—and the private sector, to create awareness of changes in the population structure, especially in terms of the rate of demographic ageing and the economic, health, social and cultural implications;
3. *Underscore* the importance of examining thoroughly and comprehensively the effects of migration on the ageing dynamic of the communities of origin, transit and destination of migrants, with special attention to the impact of migration flows on the migrants themselves, their families, community and society, as well as on the economic and social development of countries;
4. *Propose* that preventive and health-care measures be adopted to improve access by older persons with disabilities to treatment, care, rehabilitation and support services;
5. *Take into account* the effects of HIV/AIDS on older persons, both in terms of access to prevention, treatment, care and support services and in terms of their valuable contribution in caring for family members suffering from the disease, as well as the role they play as promoters in creating a positive environment, free from any stigma and discrimination against persons with HIV/AIDS;
6. *Support* actively the incorporation of the gender perspective in all policies and programmes that take into account the needs and experiences of older persons;
7. *Reaffirm our commitment* to mainstream the issue of ageing and treat it as a priority in all spheres of public policy and programmes and to allocate and take steps to secure human, material and financial resources for achieving the appropriate monitoring and evaluation of the measures put into practice, distinguishing between urban and rural areas and recognizing the intergenerational, gender, race and ethnic perspective in policies and programmes designed for the sectors of the population that are the most vulnerable, whether because of their economic and social status or as a result of humanitarian emergency situations, such as natural disasters or forced displacements;
8. *Recognize* the need to strengthen national and international capacities as well as international and South-South cooperation to address the problems of population ageing in the different spheres of human endeavour and public policy;
9. *Propose* that studies and research be undertaken to facilitate informed decision-making on the issue of ageing and the preparation of demographic and socio-economic profiles of

⁷² LC/L.2749(CRE.2/3).

- populations of older persons which enable us to identify gaps in the implementation of human rights and ways of ensuring their full enjoyment and the full and effective participation of older persons in development;
10. *Resolve* to do all in our power to expand and improve the coverage of pensions, whether contributory or non-contributory, and to adopt measures to incorporate greater solidarity into our social protection systems;
 11. *Promote* dignified work, as defined by the International Labour Organization, for all older persons, taking steps to secure and allocate loan support, training and marketing programmes that are conducive to a dignified and productive old age;
 12. *Recognize* the need to promote equitable access to timely and quality comprehensive health-care services, including, subject to the public policies of each country, access to basic long-term medications for older persons;
 13. *Propose* that legal frameworks and monitoring mechanisms be created to protect the human rights and fundamental freedoms of older persons, whether they live in long-stay facilities or in their own homes, and to facilitate the formulation and enforcement of laws and programmes for the prevention of abuse, abandonment, neglect, ill-treatment and violence against older persons;
 14. *Propose* humane practices in order to care for and understand older persons holistically, with absolute respect for their human rights and fundamental freedoms, mobilizing national resources to ensure that such care is provided in the context of a meaningful and solidarity-based human relationship;
 15. *Recommend* that terminally ill older persons be given palliative care to alleviate their suffering, while support is given to their families, and that professionals demonstrate sufficient sensitivity and competence to perceive such suffering, which calls for palliative measures to control physical and psychosocial symptoms as well as spiritual assistance;
 16. *Promote* the implementation of initiatives to improve the accessibility of public areas, adapt housing to the needs of multigenerational and older-single-person households and facilitate ageing in the home with measures to support families, in particular women, in caregiving tasks;
 17. *Request* the Executive Secretary of the Economic Commission for Latin America and the Caribbean to adopt timely measures to intensify the activities carried out by the United Nations at the regional level in the area of ageing; request also the Commission to provide technical assistance in terms of information, research and training relating to the issue of ageing and public policies in order to foster and strengthen the efforts made by countries in this respect; and invite the Commission to examine the progress made by countries of the region in applying the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing and present its findings to the ECLAC sessional Ad Hoc Committee on Population and Development;
 18. *Promote* access to continuing education and life-long learning at all levels;
 19. *Encourage* the creation of degree programmes at baccalaureate and master's levels in regional universities in social gerontology and management of geriatric care services, to encourage young adults to build relevant careers in their countries and reduce the exodus of health professionals from the region;
 20. *Urge* academic centres, scientific societies and networks for cooperation in population, ageing and development to conduct detailed, diversified and expert studies on the issue, and to organize work and discussion meetings to strengthen the research and training agenda relating to ageing, and set up and support centres for study, research and human resource training in this field;
 21. *Recommend* that older persons be included in the processes of preparation, implementation and monitoring of policies;
 22. *Request* that older persons be included in activities and conferences scheduled by the United Nations for the next five year-period;
 23. *Request* international cooperation agencies to take older persons into account in their policies and projects as part of their measures to assist countries in implementing the commitments set out in the Regional Strategy;
 24. *Recommend* that account be taken of older persons in the efforts under way to achieve the internationally agreed development goals, including those adopted in the Millennium Declaration;

25. *Agree to request* the member countries of the United Nations Human Rights Council to consider the possibility of appointing a special rapporteur responsible for the promotion and protection of the human rights of older persons;
26. *Pledge* to make the necessary consultations with our Governments to promote the drafting of a convention on the rights of older persons within the framework of the United Nations;
27. *Invite* persons from all countries and social sectors to individually and collectively join our commitment with a shared vision of equality and the exercise of rights in old age;
28. *Agree* that this Brasilia Declaration constitutes the contribution of Latin America and the Caribbean to the forty-sixth session of the Commission for Social Development of the United Nations Economic and Social Council, which will be held in February 2008;
29. *Express* our gratitude to the Government of Brazil for hosting the second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean.

Annex 2

General recommendation N° 27 on older women and protection of their human rights⁷³

Introduction

1. The Committee on the Elimination of Discrimination against Women (hereinafter referred to as “the Committee”), concerned about the multiple forms of discrimination experienced by older women and that older women’s rights are not systematically addressed in States parties’ reports, at its forty-second session, pursuant to article 21 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as “the Convention”), decided to adopt a general recommendation on older women and protection of their human rights.

2. In its decision 26/III, the Committee recognized that the Convention “is an important tool for addressing the specific issue of the human rights of older women”.⁷⁴ General Recommendation No. 25, on article 4, paragraph 1, of the Convention on temporary special measures (see E/CN.6/2004/CRP.3, annex I) also recognises that age is one of the grounds on which women suffer multiple forms of discrimination. In particular, the Committee recognized the need for statistical data disaggregated by age and sex as a way to better assess the situation of older women.

3. The Committee affirms previous commitments to older women’s rights enshrined in, inter alia, the Vienna International Plan of Action on Ageing,⁷⁵ the Beijing Declaration and Platform for Action,⁷⁶ the United Nations Principles for Older Persons (General Assembly resolution 46/91, annex), the Programme of Action of the International Conference on Population and Development,⁷⁷ the Madrid International Plan of Action on Ageing 2002,⁷⁸ and the Committee on Economic, Social and Cultural Rights 1995, General Comment No. 6 on the economic, social and cultural rights of older persons and General Comment No. 19 on the right to social security.

Background

4. Current United Nations figures estimate that within 36 years there will be more people over the age of 60 than children under 15 years old globally. They estimate the number of older people in 2050 at over 2 billion, or 22 per cent of the global population, an unprecedented doubling of the present 11 per cent of the population that is over 60.

5. The gendered nature of ageing reveals that women tend to live longer than men and that more older women than men live alone. There are 83 men for every 100 women over the age of 60; there are only 59 men for every 100 women over the age of 80. Further, statistics from the Department of Economic and Social Affairs indicate that 80 per cent of men over 60 are married

⁷³ CEDAW/C/2010/47/GC.1. Adopted in the Forty-seventh session of the Committee on the Elimination of Discrimination against Women, 4 - 22 October 2010, advance unedited version.

⁷⁴ See Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38 (A/57/38, Part One, chap I, decision 26/III, and chap. VII, paras. 430-436).

⁷⁵ Report of the World Assembly on Ageing, Vienna, 26 July-6 August 1982 (United Nations publication, Sales No. E.I.16), chap. VI, sect. A.

⁷⁶ Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

⁷⁷ Report of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

⁷⁸ Report of the Second World Assembly on Ageing, Madrid, 8-12 April 2002 1995 (United Nations publication, Sales No. E.02.IV.4), chap. I, resolution 1, annex II.

compared with only 48 per cent of older women.⁷⁹

6. This unprecedented demographic ageing, owing to the improvement of living standards and basic health-care systems as well as declines in fertility and rising longevity, can be considered as a success of development efforts and is set to continue, making the twenty-first century the century of ageing. But those changes in population structures have profound human rights implications and increase the urgency of addressing the discrimination experienced by older women in a more comprehensive and systematic manner through the Convention.

7. The issue of ageing is shared by both developed and developing countries. The proportion of older persons in less developed countries is expected to rise from 8 in 2010 to 20 per cent by 2050,⁸⁰ while that of children will fall from 29 to 20 per cent.⁸¹ The number of older women living in less developed regions will increase by 600 million within the period 2010 to 2050.⁸² This demographic shift presents major challenges in developing countries. The ageing of societies is also a well established trend and a significant feature in most developed countries.

8. Older women are not a homogeneous group. They have a great diversity of experience, knowledge, ability and skills. Their economic and social situation, however, is dependent on a range of demographic, political, environmental, cultural, employment, individual and family factors. The contributions of older women to society in public and private life as leaders in their communities, as entrepreneurs, caregivers, advisers, mediators among other roles are invaluable.

Purpose and objectives of the recommendation

9. This general recommendation on older women and the recognition of their rights, explores the relationship between all the articles of the Convention and ageing. It identifies the multiple forms of discrimination that women face as they age; outlines the content of the obligations assumed by States as parties to the Convention, from the perspectives of ageing with dignity and older women's rights; and, includes policy recommendations to mainstream the responses to the concerns of older women into national strategies, development initiatives and positive action so that older women can participate fully without discrimination and on the basis of equality with men.

10. The general recommendation also provides guidance to States parties on the inclusion of older women's situation in the reporting process on the Convention. Elimination of all forms of discrimination against older women can only be achieved by fully respecting and protecting their dignity, right to integrity and self-determination.

Older women and discrimination: Specific areas of concern

11. Both men and women experience discrimination based on old age, but older women experience ageing differently. The impact of gender inequalities throughout their lifespan is exacerbated in old age and is often based on deep rooted cultural and social norms. The discrimination that older women experience is often a result of unfair resource allocation, maltreatment, neglect and limited access to basic services.

⁷⁹ UNDESA, Population Ageing and Development Chart, 2009, <http://www.un.org/esa/population/publications/ageing/ageing2009.htm>.

⁸⁰ UNDESA, Population Ageing and Development Chart, 2009, <http://www.un.org/esa/population/publications/ageing/ageing2009.htm>.

⁸¹ UN Population Division, World Population Prospects: The 2008 Revision Population Database, <http://esa.un.org/unpp/index.asp?panel=1>, visited 26 August 2010.

⁸² UN Population Division, World Population Prospects: The 2008 Revision Population Database, <http://esa.un.org/unpp/index.asp?panel=1>, visited 26 August 2010.

12. The concrete forms of discrimination against older women may differ considerably in various socioeconomic circumstances and socio-cultural environments, in which equality of opportunities and choices regarding education, work, health, family and private life have been enhanced or limited. In many countries the lack of telecommunication skills, access to internet or adequate housing and social services, loneliness and isolation pose problems for older women while older women living in rural areas or urban slums often suffer a severe lack of basic resources for subsistence, income security, access to healthcare and information on and enjoyment of their entitlements and rights,

13. The discrimination older women experience is often multidimensional, with age discrimination, compounding other forms of discrimination based on sex, gender, ethnic origin, disability, levels of poverty, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, or who are internally displaced or stateless often experience a disproportionate degree of discrimination.

14. Many older women face neglect as they are considered no longer active in their productive and reproductive roles and are seen as a burden to their families. In addition widowhood and divorce exacerbate discrimination. Furthermore lack of or limited access to health care services for diseases and geriatric conditions such as diabetes, cancer, in particular the most prevalent forms of cancer among older women, hypertension, heart disease, cataract, osteoporosis and Alzheimer prevent older women from enjoying their full human rights.

15. The full development and advancement of women cannot be achieved without taking a life cycle approach, recognizing and addressing the different stages of women's lives —childhood, adolescence, adulthood and old age— and their impact on enjoyment of human rights by older women. The rights enshrined in the Convention are applicable at all stages of a woman's life but, in many countries, age discrimination continues to be tolerated and accepted at the individual, institutional and policy levels and few countries have legislation prohibiting discrimination based on age.

16. Gender stereotyping and traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular older women with disabilities, including on family relationships, community roles, their portrayal in the media, attitudes of employers, health workers and other service providers and can result in violence and psychological, verbal and financial abuse.

17. Older women are often discriminated against through lack of opportunity to participate in political and decision-making processes. Lack of identity documentation as well as transportation means may prevent older women from voting. In some countries, older women may not form or participate in associations or other non-governmental groups to campaign for their rights. Further, mandatory retirement ages may differ for women and men with women being forced to retire earlier, which may cause discrimination against older women, including those who wish to represent their Governments at the international level.

18. Older women with refugee status or who are stateless or asylum-seekers, as well as those who are internally displaced or are migrant workers, often face discrimination, abuse and neglect. Older women affected by forced displacement or statelessness may suffer from post-traumatic stress syndrome, which may not be recognized or treated by health-care providers. Older refugee and internally displaced women are sometimes denied access to health care because they lack legal status in the country of asylum, lack legal documentation, and are resettled far from health-care facilities, or experience cultural and language barriers in accessing services.

19. Employers often regard older women as a non profitable investment for education and vocational training. Older women also do not have equal educational opportunities to learn modern information technology nor resources to obtain them. Many poor older women, especially older women with

disabilities and those living in rural areas, have been denied the right to education and have received little or no formal or informal education. Illiteracy and innumeracy can severely restrict older women's full participation in public and political life, the economy and access to a whole range of services, entitlements and recreational activities.

20. Women are fewer in the formal employment sector. Women also tend to be paid less than men for the same work or work of equal value. Gender-based discrimination in employment throughout their life has a cumulative impact in old age, compelling older women to face disproportionately lower income and lower or no access to pensions compared with older men. The Committee on Economic, Social and Cultural Rights in General Comment 19 recognises that non-contributory pensions will be required in most States since it is unlikely that everyone will be covered by contributory schemes (paragraph 4 (b)) and the provision of social protection for older women, particularly those with disabilities, is provided for in the Convention on the Rights of Person with Disabilities, Article 28 (2) (b). Even when they are entitled to an old age pension, the amount thereof is closely linked to wages they have earned, which results in lower pensions compared with men. Further, older women are particularly affected by different mandatory retirement ages to those of men which constitutes discrimination on the basis of age and sex. Retirement ages for women should be optional to protect older women's right to continue working if they choose to and to accumulate increased pension benefits where applicable at par with men. Many older women provide care for, or are the sole caregivers of, dependent young children, spouses/partners or old parents. The financial and emotional cost of this unpaid care work is rarely recognized.

21. The right to self-determination and consent regarding health care of older women are not always respected. Social services, including provisions for long term care, for older women might be disproportionately reduced when public expenditure is cut. Postmenopausal, post-reproductive and age-related physical and mental health conditions and diseases tend to be neglected in research, academic studies, public policy and service provision. Information on sexual health, HIV and AIDS is rarely provided in a form that is acceptable, accessible and appropriate for older women. Many older women have no private health insurance or are excluded from State-provided schemes because they have not contributed to schemes during a lifetime of work in the informal sector or in unpaid care.

22. Older women may not be eligible to claim family benefits if they are not the parent or legal guardian of children for whom they care.

23. Microcredit and finance schemes usually have age limit restrictions or other criteria that prevent older women from accessing them. Many older women, particularly those who are confined to their homes, are unable to participate in community, cultural and recreational activities, which leaves them isolated and has a negative impact on their well-being. Insufficient attention is often given to the requirements necessary for independent living such as personal assistance, adequate housing, including, accessible housing arrangements and mobility aids.

24. In many countries the majority of older women live in rural areas where access to services is made more difficult due to their age and poverty levels. Many older women receive irregular, insufficient or no remittances from their migrant worker children. Denial of their rights to water, food and housing is part of the everyday lives of many poor, rural older women. For example, older women may not be able to afford adequate food due to the price of food and their inadequate income due to discrimination in employment, social security and access to resources. Lack of appropriate or affordable transport can prevent older women from accessing social services or participating in community and cultural activities. Such lack of access to transport could occur, for example, due to the lower income enjoyed by older women and the neglect in public policy to provide affordable and accessible public transport meeting the needs of older women.

25. Climate change impacts differently on women and especially older women. Older women are

more vulnerable due to physical and biological differences that can disadvantage their initial response to natural hazards, social norms and given roles that affect the way they react to a disaster, and an inequitable distribution of aid and resources caused by social hierarchies. Their limited access to resources and decision-making processes increases their vulnerability to climate change.

26. Under some statutory and customary laws, women do not have the right to inherit and administer marital property on the death of their spouse. Some legal systems justify this by providing widows with other means of economic security, such as through support payments from the deceased's estate. However, in reality these obligations are seldom enforced, and widows are left destitute. Some of those laws particularly discriminate against older widows. Older widows are particularly vulnerable to "property grabbing".

27. Older women are particularly vulnerable to exploitation and abuse, including economic abuse, when their legal capacity is deferred to lawyers or family members without their consent.

28. As stated by the Committee in its General Recommendation No. 21, "[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited." Nevertheless, polygamy continues in many States parties, and there are many women in existing polygamous unions. Older wives are often neglected in polygamous marriages once they are considered to be no longer reproductively or economically active.

Recommendations

General

29. Older women must be regarded as an important resource in society and it is an obligation for States parties to take all appropriate measures, including legislation, in order to eliminate their discrimination. States parties should adopt gender-sensitive and age-specific policies and measures, including temporary special measures in line with article 4 (1) and general recommendations No. 23 and No. 25, to ensure that older women participate fully and effectively in the political, social, economic, cultural, civil and any other field in their societies.

30. States parties have an obligation to ensure the full development and advancement of women throughout their life cycle and in times of both peace and conflict as well as in other man-made and natural disasters. States parties should therefore ensure that all legal provisions, policies and interventions aimed at the full development and advancement of women do not discriminate against older women.

31. States parties' obligations should take into account the multidimensional nature of discrimination against women and should ensure that the principle of gender equality applies throughout the life cycle in law and in its practical realization. In this regard, States parties should repeal or amend existing laws, regulations and customs that discriminate against older women and ensure that legislation prohibits discrimination on the grounds of age and sex.

32. States parties, in order to support legal reform and policy formulation, should collect, analyse and disseminate data disaggregated by age and sex and so provide information on the situation of older women, including those living in rural areas, in areas of conflict, older women belonging to minority groups, and older women with disabilities. Such data should especially focus on, amongst other issues: poverty, illiteracy, violence, unpaid work, including care-giving to those living with or affected by HIV/AIDS, and migration, as well as access to health care, housing, social and economic benefits and employment.

33. States parties should provide older women with information on their rights and how to access legal services. They should train the police, the judiciary as well as legal aid and paralegal services on the rights of older women and sensitize and train public authorities and institutions on age- and gender-related issues that affect older women. Information, legal services, effective remedies and reparation must be made equally available and accessible to older women with disabilities.

34. States parties should enable older women to seek redress for and resolve infringements of their rights, including the right to administer property and ensure that older women are not deprived of their legal capacity on arbitrary or discriminatory grounds.

35. States parties should ensure that climate change and disaster risk reduction measures are gender-responsive and sensitive to the needs and vulnerabilities of older women. States parties should also facilitate the participation of older women in decision-making for climate change mitigation and adaptation.

Stereotypes

36. States parties have an obligation to eliminate negative stereotyping and modify social and cultural patterns of conduct that are prejudicial and harmful to older women and thereby reduce the physical, sexual, psychological, verbal and economic abuse that older women, including older women with disabilities, experience based on negative stereotyping and negative cultural practices.

Violence

37. States parties have an obligation to recognize and prohibit violence against older women, including those with disabilities, in legislation on domestic violence, sexual violence and violence in institutional settings. States parties should investigate, prosecute and punish all acts of violence against older women, including those committed as a result of traditional practices and beliefs.

38. State parties should pay special attention to the violence suffered by older women in times of armed conflict, the impact of armed conflicts on their lives, and the contribution that older women can make to the peaceful settlement of conflicts as well as to reconstruction processes. When addressing sexual violence, forced displacement and the conditions of refugees during armed conflict, States parties should give due consideration to the situation of older women. States parties should take into account relevant UN resolutions on women and peace and security when addressing such matters, including, in particular, Security Council resolutions 1325 (2000), 1820 (2008) and 1889 (2009).

Participation in public life

39. States parties have an obligation to ensure that older women have the opportunity to participate in public and political life and hold public office at all levels and that older women have the necessary documentation to register to vote and run as candidates for election.

Education

40. States parties have an obligation to ensure equality of opportunity in the field of education for women of all ages and to ensure that older women have access to adult education and lifelong learning opportunities as well as to the educational information they need for their well-being and that of their families.

Work and pension benefits

41. States parties have an obligation to facilitate the participation of older women in paid work without facing any discrimination based on their age and sex. States parties should ensure that special attention is paid to overcome problems that older women might face in the working life and that they are not forced into early retirement or similar solutions. States parties should also monitor the impact of gender pay gaps on older women.

42. States parties have an obligation to ensure that retirement ages in both the public and private sectors do not discriminate against women. Consequently, States parties have an obligation to ensure that pension policies do not discriminate against women, even when they opt to retire early, and that all older women who worked have access to adequate pensions. States parties should adopt all appropriate measures, including, where necessary, temporary special measures, to guarantee such pensions.

43. States parties should ensure that older women, including those who have responsibility for the care of children, have access to appropriate social and economic benefits such as childcare benefits, as well as access to all necessary support when caring for elderly parents or relatives.

44. States parties should provide adequate non-contributory pensions on an equal basis with men to all women who have no other pension or insufficient income security and State-provided allowances should be available and accessible to older women, particularly those living in remote or rural areas.

Health

45. States parties should adopt a comprehensive health care policy for the protection of the health needs of older women in keeping with General Recommendation 24 on women and health. This should ensure affordable and accessible health care to all older women through, where appropriate, the elimination of user fees for them, the training of health workers in geriatric illnesses, the provision of medicine to treat age-related chronic and non-communicable diseases, long term health and social care, including care that allows for independent living, and palliative care. This should also include interventions promoting behavioural and lifestyle changes to delay onset of health problems, such as healthy nutritional practices and active living, and affordable access to healthcare services, including screening and treatment for diseases, in particular those most prevalent among older women. Health policies must also ensure that health care provided to older women, including those with disabilities, is based on the free and informed consent of the person concerned.

46. States parties should adopt special programmes tailored to address the physical, mental, emotional, and health needs of older women with special focus on women belonging to minorities and women with disabilities and those tasked with caring for grandchildren and other young family dependants due to the migration of young adults or caring for family members living with or affected by HIV/AIDS.

Economic empowerment

47. States parties have an obligation to eliminate discrimination in all its forms against older women in the areas of economic and social life. They should remove any barriers based on age and sex to access agricultural credit and loans and ensure access to appropriate technology for older women farmers and small land holders. States parties should provide special support systems and collateral-free microcredit as well as encourage micro-entrepreneurship for older women. States parties should also create recreational facilities for older women and provide outreach services to older women who are confined to their homes. States parties should provide affordable and appropriate transportation to enable older women, including those living in rural areas, to participate in economic and social life, including community activities.

Social benefits

48. States Parties should take necessary measures to ensure access of older women to adequate housing that meet their specific needs and remove architectural and other barriers hindering the mobility of older persons and leading to forced confinement. States parties should provide social services that enable older women to remain at home and live independently for as long as possible. States parties should ensure that laws and practices affecting older women's right to housing, land and property are abolished. States parties also should protect older women against forced evictions and homelessness.

Rural and other vulnerable older women

49. States parties should ensure that older women are included and represented in rural and urban development planning processes. States parties should provide affordable water, electricity and other utilities to older women. Policies to increase access to safe water and adequate sanitation should ensure that related technologies are designed so that they are accessible and do not require undue physical strength.

50. States parties should ensure the protection of older women with refugee status or who are stateless, as well as those who are internally displaced or are migrant workers, through the adoption of gender- and age-sensitive appropriate laws and policies.

Marriage and family life

51. States parties have an obligation to repeal all legislation that discriminates against older women in marriage and upon its dissolution, including in the areas of property and inheritance.

52. States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance and protect them from land grabbing. They must adopt laws of intestate succession that comply with their obligations under the Convention. Furthermore, they should take measures to end practices that force older women to marry against their will and should ensure that succession is not conditioned on forced marriage to a deceased husband's sibling or any other person.

53. States parties should discourage and prohibit polygamous unions, in accordance with General Recommendation No. 21, and ensure that upon death of a polygamous husband, his estate is shared among the wives and their respective children on a basis of equality.