

Draft United Nations Declaration on the Rights of Older Persons

**Prepared by the Allard K. Lowenstein International Human Rights Clinic
Yale Law School with the International Longevity Center**

The General Assembly,

Recalling its resolution 37/51 of 3 December 1982 endorsing the Vienna International Plan of Action on Ageing, by which it called upon States to make continuous efforts to implement the principles and recommendations of the Plan,

Recalling its resolution 46/91 of 16 December 1991 on United Nations Principles for Older Persons, by which it encouraged States to incorporate principles promoting independence, participation, care, self-fulfillment, and dignity for older persons into national programmes,

Recalling also General Comment No. 6 on the Economic, Social and Cultural Rights of Older Persons adopted by the Committee on Economic, Social and Cultural Rights in 1995,

Recognizing the continuing importance of the Second World Assembly on Ageing and its Political Declaration and Madrid International Plan of Action on Ageing, 2002,

Guided by the purposes and principles of the Charter of the United Nations, including the duty of all States to fulfill in good faith the obligations assumed by them in accordance with the Charter,

Recognizing that the peoples of the United Nations, in adopting the Charter of the United Nations, declared a commitment to fundamental human rights and the dignity and worth of the human person,

Noting the elaboration of those rights in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and other conventions and declarations to ensure the application of universal standards to particular groups,

Affirming that older persons have the right to the equal enjoyment of all civil, political, economic, social, and cultural rights,

Affirming further that older persons have made and continue to make valuable contributions to the societies in which they live,

Reaffirming that older persons should be free from all forms of discrimination in the exercise of their rights,

Considering that many more people are living longer and in better health than ever before,

Recognizing that older persons must be provided with opportunities to participate in and contribute to society,

Concerned that older persons have long been discriminated against, exploited, abused, and neglected on the basis of their age,ⁱ

Concerned further that the vulnerability and invisibility of older persons perpetuates discrimination, exploitation, abuse, and neglect,

Emphasizing the unique challenges confronted by older women, who often live longer than their male counterparts, take care of others into old age, and lack access to the same rights and services as men,

Noting that meaningful action to support the rights of older persons entails support to those who care for them,

Recognizing that the diversity in the situation of older persons, not only among countries but within countries and among individuals, requires a variety of appropriate policies and responses,

Recognizing further that there is no universal definition of an older person and that life expectancy and the cultural markers of old age vary widely across different social settings,

Acknowledging that resource constraints may limit the ability of states to immediately realize the rights of older persons,ⁱⁱ

Encouraging States to comply with and effectively implement all their obligations under international law as they apply to older persons, in consultation and cooperation with the persons concerned,

Emphasizing the potential for international cooperation to help achieve equal respect for older persons in all nations,

Emphasizing further the need for States to incorporate these rights and mechanisms for their protection into domestic law and undertake steps to achieve the full realization of the rights recognized in the present Declaration,

Urging States to intensify efforts to promote universal respect for the rights of older persons,

Further urging States to convene a conference for the purpose of drafting a Convention on the rights of older persons,

Solemnly proclaims the following United Nations Declaration on the Rights of Older Persons as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Older persons are free and equal to all other persons and have the right to be free from discrimination on the basis of age, gender, racial or ethnic background, nationality, disability, financial situation, or any other status.

Article 2

1. Older persons have the right to be free from physical, sexual, emotional, and financial abuse.
2. States shall take effective measures to protect older persons from all forms of exploitation, abuse, and marginalization.

Article 3

Older persons have the right to enfranchisement and participation in their state's political system, including the right to participate in the development of policy that affects their well-being.

Article 4

1. Older persons have the right to adequate food, water, shelter, clothing, and health care.
2. States shall take measures to ensure the provision of an adequate income, family and community support, and opportunities for older persons to exercise financial independence and care for themselves in the same capacity as other adults.

Article 5

Older persons have the right to equal treatment before the law and to equal access to institutions and processes of justice.

Article 6

1. Older persons have the right to social, legal and medical services that respect and enhance their autonomy.
2. Older persons have the right to autonomy in decisions about their use of social, legal and medical services, including decisions about end-of-life care.ⁱⁱⁱ

Article 7

1. States shall create mechanisms that guarantee respect for the dignity, beliefs, needs, and privacy of older persons in health care and other institutions.
2. States shall take measures to establish relief and support programs that enable families to provide care for older persons, with the aim of allowing older persons to live under the care of family members rather than in institutions.^{iv}

Article 8

1. Older persons have the right to the highest attainable standard of physical and mental health care, including preventative and rehabilitative treatment.
2. Older persons have the right to be free from discrimination on the basis of age in their access to all medical institutions, health services, and medical care.
3. Older persons with terminal illnesses or a permanent disabilities have the right to adequate continuing medical care, including adequate pain relief, provided by the State.
4. Older persons have the right to comprehensive medical care, in accordance with the national law of their respective countries.
5. States shall ensure that health-care facilities are physically and financially accessible to all older persons.

Article 9

1. Older persons have the right to work and have access to other income-generating opportunities.
2. Older persons have the right to be free from discrimination in hiring, promotion, and discharge.
3. Older persons have the right to participate in determining when and at what pace they withdraw from the labor force.
4. Older persons have the right to exercise trade-union rights to the same extent as younger workers, both while working and after retiring from the labor force.

Article 10

1. Older persons have the right to benefit from social security, including social insurance, in accordance with the national laws of their respective States.
2. States shall guarantee the provision of survivors' and orphans' benefits to the heirs of any person covered by social security or who was receiving a pension.

Article 11

Older persons have the right to receive a non-contributory, state-funded pension.

Article 12

1. Older persons have the right to equal access to educational, cultural, spiritual, and recreational resources.
2. Older persons have the right to education, including literacy training.

Article 13

Older persons have an equal right to participate in public affairs to whatever extent they are interested and capable.

Article 14

Older persons have the right to form movements or associations of older persons.

Article 15

Older persons have the right to live in environments that are safe and adaptable to personal preferences and changing capacities.

Article 16

Older persons shall have the right to enjoy the benefits of scientific progress and research on medical, biological, physiological, and social aspects of aging.

Article 17

Older persons have the right, during and after natural or other disasters, to receive timely and effective assistance from relief workers who have been trained to assist older persons.

Article 18

States shall adopt all reasonable measures to ensure that older persons are free from negative stereotypes in general and specifically in media portrayals.

Article 19

Older persons have the right to be free from traditional practices that, on the basis of their age, infringe upon their fundamental human rights.^v

Notes on the draft

ⁱ Older persons are described here as vulnerable and invisible not because they are innately so, but because they are often rendered vulnerable by the discrimination they face. This Declaration attempts to draw attention to the ways in which older persons are often overlooked, without perpetuating the stereotype that they are innately vulnerable.

ⁱⁱ The recognition that states face resource constraints in working toward the progressive realization of international human rights standards is common to some of the most important and universally adopted human rights documents, including the International Covenant on Economic, Cultural and Social Rights. This recognition does not provide states that have limited resources with an exemption to international human rights obligations but instead recognizes that even the most constrained states must take immediate steps to progressively realize the rights defined herein.

ⁱⁱⁱ The reference to "end-of-life care" is intended to convey the right of older persons to exercise autonomy in health-care decision-making while recognizing that state practice and cultural ritual related to such care vary widely.

^{iv} This provision seeks to express the importance of establishing social welfare benefits for people taking care of the elderly outside of their professional capacity. Although this is framed in terms of "family," it is neither intended to apply only to biological family members nor to impose an obligation on families to engage in such care.

^v The following issues may also be of concern for future drafts of this declaration:

- Older women – There are already international human rights instruments that protect the rights of women as women and that apply equally to older women; this draft seeks to avoid drawing the focus away from older persons and shifting the focus to gender (or ethnicity or other such identity groups).
- Older persons with disabilities – Although older persons may suffer from more disabilities than the young, the draft seeks to avoid stereotyping older persons as disabled. Furthermore, it is difficult to craft language distinguishing between persons with disabilities as a result of their age and persons with disabilities more generally.
- Older persons being free from traditional practices that infringe upon their fundamental human rights on the basis of their age – One of the previous draft's reviewers suggested including this provision, but it is difficult to craft language that provides a ground for identifying such practices and distinguishing between harmful practices that are "traditional" (and presumably linked with "culture") and harmful practices that are non-traditional.