



ROUNDTABLE SERIES


MAINSTREAMING KNOWLEDGE ON AGEING

TAKEAWAYS



ACCESS TO JUSTICE FOR OLDER PERSONS: Effective and participative systems

 22 JUNE 2023

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With the support of:



This document has been prepared by the Division for People and Social Inclusion at UNITAR, Ms. Analucía Jácome, Senior Project Leader and Human Rights Expert, Mr. Rafael Padilla, SDP team, and Mr. Israel Ledesma, Graphic Designer. We hope you enjoy it!

MODERATOR



Mr. Alex Mejia

Director, Division for People and Social Inclusion
UNITAR

WELCOME REMARKS



Mr. Nikhil Seth

UN Assistant Secretary-General,
Executive Director, United Nations Institute for Training and Research
(UNITAR)

“Leaving no one behind implies addressing different vulnerabilities, including those coming from ageing.”

1. Last year, we took stock on the current situation of ageing from frontier issues, good practices, and challenges at local, regional, and international levels through existing mechanisms and initiatives in the framework of the United Nations. It was also the opportunity to learn from the roles of States, National Human Rights Institutions, civil society, academia, the private sector, and the work of UN entities in the field.
2. This year, we are going to focus on accessibility through the celebration of five events from today until November. These discussions will serve to better understand core elements on access to justice, labour markets, political participation, health and social services, cultural and leisure services, as well as engaging different actors.
3. Same as last year, Human Rights, the demographic worldwide scenario, human mobility, digital divide, gender, labor, and health issues, will continue as the heart of our discussions.
4. UNITAR's team strongly believes that joining efforts contributes to raising awareness and bridge paths for advancing ageing issues from a comprehensive manner.
5. The creation of spaces and initiatives to raise awareness, such as this series, represents an opportunity to enhance capabilities towards a culture of learning.

HIGHLIGHTS ON UNITAR

UNITAR is a United Nations autonomous body with the mission of developing the individual, institutional and organizational capacities of countries and other UN stakeholders through high quality learning solutions and related knowledge products and services to enhance decision-making and to support country-level action for overcoming global challenges. In this regard, the UN Decade of Healthy Ageing has triggered UNITAR's interest in approaching other UN entities, as well as States, academia, non-governmental organizations, and the private sector for organizing this Virtual Roundtable Series.



Focus: Barriers and good practices in access to justice at international level



Mr. Pradeep Wagle

Chief of the Economic, Social and Cultural Rights Section,
Office of the High Commissioner for Human Rights (OHCHR),
Geneva

“A significant challenge is that older persons may not be aware of their rights, and the available legal remedies provided for them by law due to limited access to information and lack of education about legal processes.”

1. Financial constraints including affordability of legal services and lack of free legal assistance are often the cases when older persons seek judicial remedies. Poverty poses a significant barrier for older persons, especially for those from developing and less developed countries as well as those living in rural areas.
2. Physical barriers and access to accessible buildings, transportation and other public services prevent many older persons from accessing to courts for legal aid. This is particularly problematic for people living in remote areas because most legal services are available in cities. This situation becomes even more serious when older persons have disabilities.
3. Court proceedings furthermore are often not adapted to older persons' needs and abilities and don't provide reasonable accommodation. Digitalization, which is the most advanced requirements of our modern life, creates additional barriers to older persons because the ambition of claims and documents in formal proceedings are increasingly processed electronically.
4. In some cases, cultural norms hinder access to justice for older persons, particularly for older women; they are often reluctant to resort the legal system to resolve disputes mainly because nonsense of honor same particularly regarding family matters, such as inheritance of property violence and abuse.
5. Besides these barriers, there are some promising practices which includes increasing awareness raising courts giving priority to older persons to expedite proceedings, provision of free legal assistance, mobile courts, community Law centers in remote areas, and use of hotlines for older persons. Essential elements of the right to access to justice could remain too general and not adequately adapted to overcome challenges.

HIGHLIGHTS ON THE WORK OF THE OHCHR AND ACCESS TO JUSTICE

The Economic, Social, and Cultural Rights Section of the OHCHR focuses on economic, social, and cultural rights as enshrined in international human rights instruments. The section has contributed to advancing access to justice for older persons, by doing research and analysis on the barriers faced and providing guidance on how to address these challenges. To this end, the Office works with member states, civil society organizations, academia, and other stakeholders.





FOOD FOR THOUGHT

Eight million older persons across the globe are facing significant challenges in accessing justice and remedy for their human rights violations. Access to justice for older persons is not just a matter of legal rights but a testament to our society's values and principles. We must recognize the challenges the older person face in every part of the world and collectively to ensure its responsive laws and policies processes and provide them with support and resources they need to seek Justice; by doing so, we will ensure just and equitable societies for all.

To better address this problem a comprehensive, dedicated international legally binding instrument on the human rights of older persons must be put in place to define all the elements of their rights specifically, as well as normative elements relating autonomy and legal capacity of older persons.

DO NOT FORGET!

The International Human Rights framework provides that access to justice is a core element of the rule of law. It is indeed a fundamental right and an essential requirement for the protection and promotion of all other human rights. The UDHR contemplates the right to equality before the law without discrimination, equal protection under the law, the right to an effective remedy for violations of these rights. The ICCPR requires States to guarantee that individuals have accessible and effective remedies to assert their rights.

The CESCR also recognizes that everyone has the right to an accessible, affordable, timely and effective judicial or administrative remedy. The ICRPD is the first international human rights instrument that enshrines the explicit rights to access to justice, falls for the elimination of obstacles and barriers faced by persons with disability in accessing justice on an equal basis with others. All these instruments enshrine access to justice, to be applied equally to older persons who are entitled to the same protections and guarantees in accessing justice as other individuals.

USEFUL SOURCES

- Relevant information on access to justice and remedies for older persons is available here:

[The 2030 Agenda and Human Rights \(un.org\)](https://www.un.org/development/desa/destres/2030-agenda/)

- Find here the working document submitted by the OHCHR -Substantive inputs in the form of normative content for the development of a possible international standard on the focus areas “right to work and access to the labour market” and “access to justice.”

[A AC.278 2022 CRP.2 \(un.org\)](https://www.un.org/development/desa/destres/2030-agenda/)

- Learn more about the work the OHCHR spearheads within the UN system in the spirit of improving the access to human rights tools and processes by older persons here:

<https://www.ohchr.org/en/older-persons>



Focus: National protection systems in the Americas region



Mr. Joel Hernández García

Commissioner, Inter-American Commission on Human Rights (IACHR),
Organization of American States

“Organs of the Inter -American System have pointed out that the right to judicial protection entails the duty of States to provide an effective judicial remedy against acts that violate the rights of persons under their jurisdiction.”

1. The Interamerican Commission has recently published its first report on the human rights of older persons and national protection systems. It provides a unique guide highlighting the historical process of recognizing older persons as subjects of international protection, as well as the recent development of international standards to guarantee human rights, including access to justice through its 4th chapter.
2. The principle of equality and the prohibition of discrimination has been recognized as a norm of “jus-cogens” -compelling law- within the inter-American system. This includes age discrimination and the explicit mandate to prohibit intersectional discrimination. Eradicating age discrimination must also consider the confluence of other criteria that exacerbate the vulnerability of older persons, such as gender, ethnicity, racial origin economic condition, and other factors.
3. These guarantees require some adjustments to be enjoyed by older persons. Accordingly, the Interamerican Convention on Older Persons combines various aspects involving the right to access to justice for older persons, such as respect for equality and non -discrimination, the importance of the time factor in judicial proceedings, in cases involving claims of violations of the rights of older persons, preferential and differential treatment, the need for procedural adjustments, and training on the rights of older persons for personnel working in the administration of justice.
4. Legal capacity is critical for older persons to access justice. Under International Human Rights Law, States in the Americas have committed to adopt measures to provide the access to the support they may need to exercise their legal capacity, and to ensure that in all actions, regarding the exercise of the legal capacity, appropriate and effective safeguards are provided to prevent them from abuse. These standards are not abstract regulations. The contrary, the Commission observes that some of these guarantees are already in place in several countries in the hemisphere.

HIGHLIGHTS ON THE WORK OF THE IACHR AND ACCESS TO JUSTICE

The concern and attention for older persons has been spread across different documents, reports, cases and jurisprudence and international treaties within the Organization of American states, bodies, and mandate. The Commission observes the “American Declaration of the Rights and Duties of Man” and other inter-American treaties, especially the Convention on Older Persons in 2015, to analyze the obligation of American States in favor of older persons.

IACHR Inter-American
Commission on
Human Rights



5. Some American States have undertaken measures to guarantee due diligence and preferential treatment for older adults in processing, resolving, and enforcing decisions of administrative and judicial proceedings. Legislation on access to justice for older persons is contained in specialized norms of general nature, as well as the standards related to bio disposition patients are retirement. Regarding programs for the judicial protection of older persons, the Commission has found that the care for other adults has been addressed in protocols with specific guidelines and directives for these purposes.
6. Furthermore, some countries reported having alert systems that inform justice operators of the existence of proceedings involving older persons, so that proceedings can move-on on a faster timeline. Likewise, there are services for access to justice in cases involving undocumented persons, dispossessions, and mistreatments, as well as the implementation of measures to achieve closer contact between the prosecutorial investigation and the victims of crimes, including elderly victims of crime.



TO BEAR IN MIND

When approaching the right to access to justice and older persons, it is critical to understand their exposure to discrimination and violence because these are obstacles to exercising the right to justice. Ageism is a source of violence against this group. Prejudices and stereotypes surrounding older persons, especially older women, concerning the alleged defenselessness due to supposed cognitive decline, their health situation, dependence, lack of autonomy, and reduced values as productive members of society, expose them to an elevated risk of being victims of violence.

REMEMBER

Structural inequality restricts access to justice for specific segments of society, including older persons. In neutral terms, every older person has a right to a hearing. With due guarantees and with a reasonable time, by a competent, independent,

and impartial tribunal, previously established by law in the substantiation of any accusation of a criminal nature made against them, or simply for the termination of the rights and obligations.

USEFUL SOURCES

- We warmly invite you to read the Interamerican Convention on protecting the Human Rights of Older Persons (A-70)

[Click here](#)

- The Report “Human Rights of the elderly and national protection systems in the Americas”.

[Click here](#)

- To learn more about the work of the IACHR on the Rights of Older Persons.

[Click here](#)



Focus: National experience on access to justice



Mme. Gladice Pickering

Executive Director,
Ministry of Justice,
Namibia

“Access to justice for older persons in the country is important because they are almost a minority group, considering there is mostly a youthful population.”

1. The Constitution of Namibia enshrines equality and freedom from discrimination in various grounds of all persons, including equality before the law. In the same vein, there is Namibian jurisprudence from courts, laws, and policies, on discrimination based on age as not tolerated nor allowed.
2. The Namibian Ministry of Justice have been granting legal aid to applicants over the age of 60 years in domestic violence, maintenance, and civil matters, respectively. This has become more common in recent years because of economic conditions where older persons possess their own houses or immovable properties, but they have difficulty in paying taxes and municipal bills for water and electricity because of economic hardship.
3. Where their houses are becoming the subject of a creditors' warrant of execution where the property is attached to settle a debt, the Ministry has been going to court to ensure that these goods are not attached for the settlement of debts. Older persons are there for safeguarded that they will not lose their property for the settlement of debt.
4. Legal aid is granted to older persons in divorce cases and to litigants over the age of 60 years in criminal matters. Likewise, correctional service facilities are specifically adapted to the needs of older persons when they are sentenced to custodial sentences. In labour cases, Legal aid is also granted to older persons where they face disputes or where they are engaged in disputes with their employers or former employers because at the age of 60 disputes arise with regards to the settlement of severance packages.
5. Namibia also faces challenges in access to justice for older persons, including inaccessibility to the legal aid scheme by this group in rural areas because of the remoteness of the places where they live. There is also a lack of understanding about the processes as well as lack of processes in place to enable them to understand their rights and the steps they need to go through. Another challenge is the many languages spoken in Namibia, together with an inadequate prioritization of cases involving older persons.

HIGHLIGHTS ON NAMIBIA AND ACCESS TO JUSTICE

Legal Aid is a statutory service or scheme in the Ministry of Justice of the Republic of Namibia that was established under the Legal Aid, Act 29 of 1990 as amended. It is administered by the Legal Aid Directorate which mandate is to provide legal aid at State expense. The objective of the scheme is to ensure access to justice by providing equality before the law, the right to counsel and the right to a fair trial.





DID YOU KNOW?

Namibia has a successful legal aid scheme with a relevant impact on the right to access to justice for older persons; in particular, through the Legal Aid Act - Act 29 of 1990. Among other provisions, in the case of minors, veterans, people in extreme financial hardship, a person in custody or a person otherwise unable to pay mandatory contributions, the Director for legal aid has the right to waive the requirement for the payment of that contribution.

INTERESTING PRACTICE!

The Maintenance Act for Namibia provides for children to care for their elder parents, where the parents are unable to take care of themselves and in need of support or maintenance. The country also has a very progressive social network in terms of providing pension for older persons. When a person reaches the age of 60 years, they immediately receive a social grant from the government, which is revised on an annual basis, with an updated amount, as needed.

USEFUL SOURCES

- Learn more about the Legal Aid Act 29 of 1990.

[Click here](#)



Focus: Good practices on participative systems



Mr. Daniel Uribe Terán

Lead Program Officer, South Center
Former Coordinator of the Chamber of Case Selection,
Constitutional Court of Ecuador

“There is a need for promoting and encouraging older persons engagement with the judiciary, not only because it is an obligation of the State, but also because their participation can actually improve judicial systems, while also improving the quality of life and respect of human rights for all.”

1. A good example of how judicial participation by older persons can achieve the promotion of human rights, and particularly towards guaranteeing truth, reparation, memory and non-recurrence happens in Argentina. There is the group “Mothers of the Plaza de Mayo,” now grandmothers, an initiative recognized worldwide for its efforts to find missing persons and children during the 20th century. The judicial process started in 1977 by a group of grandmothers filling a suit of Habeas Corpus and requesting the State of Argentina to denounce missing children and suspend all the adoption processes. There was a concern that these adoptions were carried out with children taken out from their families by the dictatorship.

The group started to visit courthouses, tribunals, and orphanages weekly, looking for their grandchildren, and starting to use the system to stop the adoption of children that were forcefully separated from their families. In 1980 the grandmothers started finding their children. They used the Inter-American Commission of Human Rights as a regional mechanism; they also used it for establishing a new law, which was adopted in 1980 that established the National Bank of Genetic Data, with the objective of requesting the restitution of the identity of children that were illegitimately appropriated during the dictatorship. By using this law, so far, 132 grandchildren have been found; they have recovered their real identity, and also have joined the grandmothers.

2. Another example, is happening now with the creation of “The Senior Women for Climate Protection Movement,” which is a group of Swiss female pensioners that established and brought a claim against Switzerland in the European Court of Justice. They argue that the State has not done enough in the face of rising temperatures climate change has put them at risk of dying because of heat waves. Europe has one of the highest numbers of death because of heat waves during summer. This group has established a process right now in Switzerland and then into the European Court of Justice, requesting this Court to determine their right to be protected and at the same time recognizing the obligation of the State to start taking climate action with regards to their rights as older persons.

HIGHLIGHTS ON THE SOUTH CENTER

The South Centre is an intergovernmental organization of developing countries. The Center undertakes research and analysis oriented on various international policy areas that are relevant to the protection and promotion of the development interests of developing countries. It provides advice to developing countries for combining their efforts and expertise to promote their common interests in the international arena.

**SOUTH
CENTRE**



3. There is the case *Poblete Vilches and Others v. Chile*, where the Inter-American Court had the opportunity to pronounce itself for the first time about the rights of older persons in the field of health. The Court recognized there is a need to build national plans to address the issue of ageing in a comprehensive manner that not only considers the vulnerability of older persons, but also their protection role for benefiting the whole of society. To do so, there is a need for States to enact legislation to facilitate access to social security systems and judicial systems. It also recognized the need for special protection and comprehensive care in order to respect their autonomy and independence.
4. The Constitutional Court of Colombia has focused on cases of older persons requiring immediate protection. In particular, the idea is to avoid subjecting them to procedures of an ordinary judicial system, by reducing the time of cases and allowing less complexity in the process.
5. Argentina has settled a unit of “mobile public defenders” to represent older persons in tribunals. By reducing the complexity of the procedures for older persons, a characteristic effect towards the reform of the whole judicial system is possible, making the judicial system a little bit better.



IMPORTANT

There are still issues that have to be addressed, for example: Preferential treatment in the processing, resolution and execution of decisions: special diligence in cases where the health or life of the older persons is at risk; the creation of special courts for older persons or the existence of a public entity dedicated to the defense of their rights; courtroom adaptations (sound amplification and lighting, etc.) in the handling of court hearings, case management, etc.; capacity building is also required, not only with respect to knowledge on their rights, but also considering the use of digital technologies, and simplification of databases and websites; access to financial resources to cover adapted reforms, including capacity building of court officials and judges, and infrastructure that guarantees universal access, access to internet and energy transition.

TO BEAR IN MIND

Regarding digital transformation and digitalization of judicial systems and in governance, it is important to understand that most of the population, including older persons, doesn't have access to internet nor the necessary infrastructure to guarantee access to that kind of processes. This is related to structural challenges that countries face, in particular, developing countries.

USEFUL SOURCES

- Abuelas Plaza de Mayo. <https://abuelas.org.ar>
- Association of Swiss Senior Women for Climate Protection v. Federal Department of the Environment Transport, Energy and Communications (DETEC) and Others. [Click here](#)
- Case *Poblete Vilches and Others v. Chile*. [Click here](#)



Focus: Analysis on the legal gaps on access to justice for older persons at international level



Dr. Michael Ashley Stein

Co-founder and Executive Director of the Harvard Law School Project on Disability, Visiting Professor at Harvard Law School

“Ageing, much like disability, is a cross cutting issue. It affects us across nationalities, across gender, across racial backgrounds, across all different types of backgrounds and so both of them are intersectional and we must always consider all the secondary levels of discrimination and opportunities for inclusion, like poverty, rural status and other factors, as having a great impact.”

1. Although older persons were not particularly included in the UN programming nor policy for the implementation of the Convention on the Rights of Persons with Disabilities, there is a wonderful turnaround on behalf of the 1.3 billion persons with disabilities since the adoption of this instrument on December 13, 2006. There have been measures to implement the Convention on the Rights of Persons with Disabilities by all UN agencies, as well as the creation of laws and policies across the world through the 187 States that have ratified it.
2. Discussing access to justice for older persons, should consider some of the same stigma and prejudice that preclude persons with disabilities. People who are older or who have disabilities face stigma in accessing justice based upon their ability to hear, to see, to recall events, to mobilize, or to move.
3. There are some cases of older persons relating to fraud, deceit, and other forms of abuse, including sexual violence, that encounter the same difficulties as judges, magistrates, referees, police, and others refuse to believe their accounts. Older persons are not seen, they are not heard, and they are turned away.
4. Most persons with disabilities across the globe have been subject to guardianship, which prevents them from having an array of rights, including access to justice. The issue of guardianship is severe. Under the basic form, which is complete guardianship, persons with disabilities, older persons and the group that overlaps between them, are prevented from bearing witness in court, from proceeding with actions in court, from acting as witnesses or even defendants in court.

HIGHLIGHTS ON THE HARVARD LAW SCHOOL PROJECT ON DISABILITY

HPOD has demonstrated a steadfast dedication to empowering civil society and other actors by fostering knowledgeable and discerning advocacy for Human Rights. Their endeavours encompass a range of activities, including the provision of comprehensive human rights training and education, the facilitation of international law and policy development, the promotion of inclusive practices in development, the dissemination of technical assistance pertaining to strategic litigation, and the cultivation of innovative perspectives regarding the capabilities of persons with disabilities and their entitlement to human rights.



Harvard Law School
Project on Disability



5. Likewise, some older persons can be unfamiliar with or reluctant to access technology, but that is going back to the bare essence of prejudice. It is important to do research, thinking and experimentation in those realms for identifying the best way to support older persons in making their own decisions.



CURIOUS FACT

Legal capacity and its articulation was the most controversial article within the CRPD during the negotiations. It was the article that received the most pushback from States in the realm of ratification, including reservations, declarations, and understandings in opposition to it.

REMEMEBER!

It is important to understand that there are times and competencies in areas in which older persons may want more, or less support in making those decisions. In doing so, it is key to carefully avoid underestimating their capabilities and to provide adequate support.

USEFUL SOURCES

- Convention on the Rights of Persons with Disabilities.

[Click here](#)

- Committee on the Rights of Persons with Disabilities, General Comment No. 1: Article 12: Equal recognition before the law.

[Click here](#)





Decade of healthy ageing



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