

# Guidelines for a Convention on the Rights of Older Persons<sup>1</sup>

## III Follow-up Meeting of the Brasilia Declaration, "For the Rights of Older Persons" ECLAC Headquarters, 5 and 6 October, 2009

The III Follow-up Meeting for the Brasilia Declaration "For the Rights of Older Persons," was held in the city of Santiago, Republic of Chile, on 5 and 6 October, 2009, at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC). It was organized by the Government of Chile, through SENAMA, with the technical support of the CELADE-Population Division of ECLAC and the Pan-American Health Organization (PAHO), with the collaboration of the Ibero-American Technical Cooperation Network (RIICOTEC), the United Nations Population Fund (UNFPA) and the International Social Security Organization (ISSA). The participating countries to the III Follow-up Meeting were the following: Anguilla, Netherland Antilles, Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, the British Virgin Islands, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, El Salvador, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, Spain, St. Lucia, St. Kitts & Nevis, the United States of America and Uruguay.

### Preamble: States at the present Convention,

- a. Reminding that the principles of the United Nations Charter declares freedom, justice and world peace, have as a basis the acknowledgement of dignity and inherent value and of equal and inalienable rights of all members of the human race,
- b. Acknowledging that the United Nations, in the Universal Declaration of Human Rights and the International Covenants on Human Rights, have recognized and proclaimed that all persons have the rights and freedoms declared in those instruments, without distinction in any form,
- c. Reaffirming the universality, indivisibility, interdependence and interrelation of all the human rights and fundamental freedoms, as well as the necessity of

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guaranteeing that older persons can fully exercise their rights without discrimination,

- d. Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and their Families,
- e. Recalling also, among others, the Additional Protocols to the Geneva Convention of 1949 refers, respectively, to the victims of armed conflicts of international and internal nature as well as the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power (Adopted by the United Nations General Assembly Resolution 40/34 of 29 November, 1985) and the Set of Principles for the protection of all persons under any form of detention or prison (Adopted by the General Assembly Resolution 43/173 of 9 December of 1988),
- f. Taking into consideration the different programmatic instruments adopted within the United Nations that deals with the concern for the special vulnerability of older persons and the possible scenarios of aggravated discrimination such as the United Nations Principles for Older Persons (adopted by General Assembly Resolution 46/91 of 16 December, 1991); the Declaration on Ageing (adopted by General Assembly Resolution A/RES/47 of 16 October 1992); and equally the Program of Action adopted at the International Conference on Population and Development" (1994); the Political Declaration and the Madrid Plan of Ageing on Ageing of 2002 and the Declaration and Plan of Action of Durban against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001),
- g. Also taking into consideration the different efforts and regional instruments based on the guiding frameworks of the United Nations such as the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights of San Salvador (1998); the Policy Framework and Plan of Action on Ageing of the African Union (2002); the Arab Plan of Action on Ageing for 2012 (2002); the Shanghai Implementation Strategy on Ageing for the Asia-Pacific Region of 2002 and the European Implementation Strategy of the Madrid Plan of Action on Ageing (2002); the Regional Strategy for the Implementation in Latin America and the Caribbean of the Madrid International Plan of Action on Ageing (2003); the Brasilia Declaration for the Latin American and Caribbean region (2007); the Declaration of Commitment of Port of Spain of Plenipotentiary Officials, Organization of American States, OAS (2009); Resolution 2455 on Human Rights and Older Persons, OAS (2009); the Plan of Action of the Pan-American Health Organization/World Health Organization (PAHO/WHO) on Health of Older Persons including Active Ageing and Health (2009) [PAHO]; among others.
- h. Reaffirming the commitments to spare no effort to promote democracy, support the rule of law and favour equality between men and women, as well as promote and

protect fundamental human rights and freedoms, including the rights to development,

- i. Reaffirming also the commitment to eliminate all forms of discrimination, among others, the discrimination for reason of age, acknowledging that people, as they age, must enjoy a full life, with health, security and active participation in the economic, social, cultural and political life of their societies,
- j. Recognizing that ageing is one of the major achievements of humanity, and that population ageing constitutes a demographic revolution that is necessary to know and promote in different dimensions that affect in all areas of society and in public policies,
- k. Taking into account the heterogeneity of population ageing and its acceleration in developing societies, the global tendency of living longer is an historic achievement that should be reflected in the realignment of public policies, in the formulation of national legislation, the organization of society and the carrying out of differentiated responses by States to the changes in age structure of the population,
- l. Reaffirming the commitment of incorporating the issue of ageing and giving it priority in all aspects of public policy and programs, as well as aiming and managing human resources, material and financials to achieve an adequate follow-up and review of the measures put in place, differentiating urban and rural areas and recognizing the intergenerational, gender, racial and ethnic perspectives, among others, in policies and programs directed at the more vulnerable of the population in function of their economic and social condition and humanitarian emergency situation, such as armed conflicts, natural disasters and forced relocation,
- m. Convinced that the particular vulnerability of older persons distinguishes them from other groups of special consideration and that the dispersion of the different international instruments of human rights makes it difficult to apply effectively and generates under-protection, it is considered, therefore, essential the effort of specific codification to ensure the realization of their civil, political, economic, social and cultural rights and guarantee the exercise of free active and significant participation of these in development,
- n. Recognizing that it is indispensable to situate promotion, protection and realization efforts of the rights of older persons in the framework of building more inclusive, cohesive and democratic societies, that fight for equality and refuse all forms of discrimination, including those related to ageing, fine-tuning intergenerational solidarity mechanisms and renewed forms of contribution of all ages to development,
- o. Highlighting that to confront the challenges of ageing, some countries have generated different frameworks of promotion, protection and realization of rights of older persons that encourage social inclusion, but despite this, the diversity of situations and achievements between countries and sub-regions persist, as well as

the predominance of actions of assistance nature that do not count on the necessity of a human rights approach in the area of policies on social security, health or social services in general,

- p. Acknowledging the need to achieve a paradigm change to approach the issues of old age and ageing, from an assistance perspective to a perspective founded on the human rights approach that recognizes the valuable existing and potential contributions of older persons to common welfare, to the diversity of communities and a significant advance in human, social, and economic development of society as well as poverty eradication,
- q. Bearing in mind that ageing can generate disabilities and dependency that require special services directed to their integral care, and that in high complexity situations the principles of bioethics may constitute a tool that guides the decisions of medical treatments and palliative care, in the framework of article 6.1 of the International Covenant on Civil and Political Rights,
- r. Actively supporting the incorporation of the gender perspective in all policies and programs that take into consideration the needs and experiences of older persons,
- s. Also actively supporting the need to take into account the aggravated vulnerability of older persons that are victims of racism, xenophobia, and any form of intolerance, among them, towards African, Afro-descendants, indigenous people, migrants, older women, refugees, roma, gypsies, sintis and nomads, sexual minorities and other minorities,
- t. Reaffirming the need to create legal frameworks and supervisory mechanisms to protect the fundamental human rights and freedoms of older persons, if they use either long-term services or if they reside in their homes, and facilitate the formulation and fulfillment of laws and programs of prevention, abuse, abandonment, negligence, mistreatment and violence against older persons,
- u. Convinced therefore, that a wide and integral international convention to promote, protect and ensure the rights and dignity of older persons will contribute significantly to lowering legislative dispersion, incentivize the creation of instances that observe the progress, facilitate the work of States responsible for the adoption of legislative measures and policies at the internal level that safeguard the rights of older persons, as well as the rights-holders and other interested parties, and promote the inclusion and participation of older persons with equality of opportunity, in the civil, political, economic, social and cultural arenas both in developing and developed countries.

### **Purpose and Reach/Application Framework of the Convention**

The purpose of this Convention is to promote, protect and ensure the full enjoyment and in conditions of equality of all the human rights and fundamental freedoms of all older persons, without distinction whatsoever, and promote the respect of their inherent dignity.

For the purposes of the present Convention, "older person" will define, heretofore, all those persons 60 years of age and older.

## Definitions

- a. "Ageing" a natural and inevitable process in which changes and transformations in the biological, psychological and social appear. The biological is perceived through the change in physical appearance, loss of vigour and less resistance to disease and unfavourable conditions. The psychological refers to changes in memory, learning, intelligence, personality, emotions, and motivations. In the social, it is relationships with other people such as family, friends, and neighbours which weaken or strengthen the integral well-being of the person.
- b. "Life Cycle" consists of stages such as infancy, childhood, puberty, adolescence and adulthood. Infancy is from birth to approximately 4 years old. Childhood begins between 4 and 5 years until 10 years of age. Puberty begins at 10 years until 14 years of age. Adolescence from 14 until approximately 21. Adulthood is the longest stage of life, beginning at 21 years of age and ending with death.
- c. "Age discrimination," is understood as any distinction, exclusion, or restriction based on age, that has the effect or purpose of impeding or nullifying the acknowledgement, enjoyment or exercise of their fundamental human rights and freedoms.
- d. "Affirmative actions" are those special actions of protection or promotion for older persons with the objective of contributing to the elimination of social, judicial, institutional or even physical barriers, which impede the enjoyment or access to substantive equality in relation to other segments of the population.
- e. "Protection measures" are appropriate and effective actions to prevent all types of violence and mistreatment towards older persons in any area in which they participate, with special emphasis of those that reside both in long-term care services as well as adapted homes and assisted residences.

## General Principles

1. The full and effective participation and social inclusion of older persons, and the appreciation of their contribution to society.
2. The respect of the inherent dignity, independence of older persons, inclusive of the freedom to make their own choices, and conserve their individual autonomy;
3. The access, in conditions of equality, to the benefits, services, and payments of social protection systems, which guarantee the exercise of economic, social and cultural rights and fundamental freedoms.

4. The strengthening of the responsibilities and mutual support obligations between persons of different generations in economic, social and emotional areas.
5. The possibility of older persons to decide the place in which they will live, including their own home, as well as the informed choice of care services.
6. Full access by older persons, in conditions of equality, to the physical environment, information and communications, and the priority attention in public and private services, both in urban as well as rural areas.

#### **General Limitation Clause**

Nothing proposed in the present Convention will affect the provisions that can facilitate, to a greater extent, the exercise of the rights of older persons and can figure into the legislation of the Participating States or in international law in force in such State. It will not restrict or abolish any of the fundamental human rights or freedoms recognized or existing in the Participating State to the present Convention with conformity to law, conventions and agreements, the guidelines or the custom with the pretext which in the present Convention does not recognize those rights or freedoms or are recognized to a lesser degree. The provisions of the present Convention will apply to all the parts of federal States without limitations or exceptions. The exercise of the rights set forth will only be subject to the limitations stipulated by legislation and international law which are necessary to protect the health or the security of the person which is dealt or of other persons, or to protect the security, order, health or the fundamental rights and freedoms of third parties. In accordance with international human rights law, the preceding paragraph does not authorize the suspension of the following rights: the right to the acknowledgement of legal personality, the right to life, the right to personal integrity, prohibition of slavery and servitude, the principle of legality and retroactivity, freedom of conscience, religion, protection of the family, right to a name, right to a nationality, political rights, nor the judicial guarantees that are indispensable to the protection of such rights.

#### **Obligations of Participating States**

The Participating States are committed to safeguarding the fundamental human rights and freedoms of older persons without any discrimination, and to that end:

1. Will adopt all legislative, administrative and other measures that are pertinent to make effective the rights recognized in the present Convention, including the creation of safety nets to make them effective;
2. Will abstain from acts or practices that are incompatible with the present Convention and will ensure that public authorities and institutions will act in accordance with its provisions;
3. Will adopt measures until the last of their available resources and, when necessary, in the framework of international cooperation, to achieve the full realization of the economic, social and cultural rights of older persons, without prejudice to the obligations set forth in the present Convention, which are applicable immediately in virtue of international law;

4. Will adopted adequate legislative and other measures, which will prohibit all types of discrimination and violence against older persons, and that incorporate corresponding sanctions to any persons, organizations or private company that discriminate on the basis of age;
5. Will adopt all legislative, budgetary, administrative and other measures to ensure equal access to integral health services —including basic medicines of continual use —, and social services —including long-term care—, timely and of quality, consistent with international human rights standards; as well as the creation and implementation of necessary services.
6. Particular needs will be differentiated, along gender, ethnic origin, geographic area of residence, and others, in the policies and programs directed towards older persons, including those that apply to emergency humanitarian situations, such as natural disasters and forced relocation.
7. Will adopt all legislative, budgetary, administrative and other measures to facilitate ageing in the community and for the strengthening of preventative actions to reduce the vulnerability and dependence in old age;
8. Introduce in academic curricula, at all educations levels, concepts of life-cycle, ageing and old age, and incentivize the creation of programs of technical training and specialized professionals;
9. Support the strengthening of academic centers, scientific societies, population, ageing and cooperation networks, to create studies on old age and ageing;
10. Celebrate consultations and collaborate actively with older persons, through the organizations that represent them, for the elaboration and application of legislation and policies to make effective the present Convention, and other issues related with older persons.

### **Equality and Non-discrimination by Age**

1. Participating States will respect the rights set forth in the present Convention and will ensure its application to all older persons subject to their jurisdiction, independent of their race, colour, sex, language, religion, political opinion or other social, national, ethnic or indigenous origin, social position, disability or other condition.
2. Participating States will prohibit all age discrimination and guarantee all older persons effective protection against age discrimination and for any other motive.

3. With the aim of promoting equality and elimination discrimination, Participating States will adopt all pertinent measures to ensure the realization of reasonable accommodation.
4. States will adopt special measures to protect older persons.
5. Specific measures or differences in treatment that are necessary to accelerate or achieve de facto equality of older persons will not be considered discriminatory in virtue of the present Convention.
6. Governments will develop specific approaches in their ageing policies in relation to older persons in high vulnerability situations, including women, persons with disabilities, migrants and persons in poverty or social marginalization, among others.

## **General Human Rights and Fundamental Freedoms**

### **Of life and end-of-life dignity**

1. Participating States reaffirm the inherent right to life of all human beings and will adopt all necessary measures to guarantee the effect enjoyment of this right by older persons in conditions of equality with others.
2. Participating States will offer equal access to palliative care, support to guarantee nutrition, measures to avoid isolation and to better manage appropriately the related problems with the fear of death, terminal patients and the dying, allowing them to avoid pain and die with dignity.
3. Participating States will not impose the death penalty on persons that, in the moment of committing a crime, were more than 70 years of age.

### **Right to physical, patrimonial, mental and emotional integrity, and to not suffer mistreatment**

1. Older persons have the right to live in dignity and security, to receive dignified treatment, independent of their age, sex, race or ethnic origin, disability or other conditions, and to be valued independent of their economic contribution.
2. Older persons have the right to live free of violence and mistreatment of a physical, sexual or psychological nature; of emotional and financial abuse; of labour exploitation and all forms of abandonment.
  - a. States will adopt legislative or other measures to prevent, block or punish those responsible for violence, mistreatment, abuse, exploitation or the abandonment of older persons.
  - b. States will promote the creation of support services to attend to cases of violence, abuse and mistreatment against older persons.



- c. States will establish supervisory and monitoring mechanisms, as well as reinforcing judicial mechanisms, to avoid domestic violence against older persons.
  - d. States will sensitize the actors responsible in charge of law-enforcement organizations, those in charge of social and health services, and civil society on the violence and abuse phenomenon against older persons and forms to identify and prevent it.
3. Older women must count on special protection against violence and mistreatment.
- a. States will promote against, in cooperation with all sections of society, all existing forms of violence against older women, including sexual violence.
  - b. Participating States will actively promote the abolition of widowhood practices, as well as traditional harmful practices, that affect the integrity of older women.
4. Older persons in private and public care institutions will have guaranteed the full respect of their human rights and dignity.
- a. States will hold period visits to medical and psychiatric institutions with the aim of verifying the situation of older persons and the enjoyment of human rights protected by the present Convention.
  - b. Participating States will take measures for the training of personnel in charge of older persons in care services, with the aim of preventing the violation of the rights of older persons, be they by action or omission, among which include: hitting and shoving; threats of abandonment; intimidation with gestures or words; use of force to feed older persons; bound to beds, burns, neglect of water, nutrition and/or personal hygiene in an intentional manner or abandonment of the older persons in bed in an incorrect position and lack of attention to wounds or illness that may produce disability or aggravate an existing disability.
  - c. Neglect of water, nutrition and/or personal hygiene in an intentional manner or abandonment of the older persons in bed and the lack of attention to wounds and/or illness.

### **Prevention against torture and cruel, inhumane or degrading treatment or punishment**

1. No older persons will be subjected to torture or other cruel, inhumane or degrading treatment or punishment. In particular, no one will be subjected to medical or scientific experiments without their free and informed consent.
- a. Participating States will take measures to eliminate the following practices: abandonment; overcrowding; malnutrition; abusive use of therapeutic treatments, and others, to which older persons are subject.

- b. States will take all measures of legislative, administrative, judicial or other character that are effective to avoid that older persons, in conditions of equality with others, be submitted to torture or other cruel, inhumane or degrading treatment or punishment.

### **Personal Freedom and Security**

1. Older persons must be able to enjoy their right to freedom even when they are staying at long-term facilities. With the aim of ensuring freedom of movement of persons that find themselves in such institutions and that possess a certain disability that does not allow them to move around independently, they will be assigned a geriatric assistant, both for leaving the institutions as well as managing adequately within it.
2. Older persons have the right to freely make decisions and accept or deny voluntarily and without coercion, treatment, interventions, or scientific or medical experiments that are of a physical or psychological nature.
3. Older persons have the right, to their ability to receive the necessary information, to make their own judgement and make decisions without coercion to be evaluated professionally, and in case incapacity is declared, it be reviewed periodically by relevant tribunals. In the case that a lack of capacity to make decisions exists, the older person has the right that the court establish a legal representative or any persons previously selected by the individual to act as proxy.
4. Older persons declared to have a loss of capacity to make decisions due to a cognitive disorder have the right to be protected from medical or scientific experimentation, as well as any form of violence, discrimination, segregation, exploitation, and cruel, inhumane or degrading treatment or punishment.

### **Freedom of Movement and Nationality**

1. Participating states will recognize the right of older persons to have freedom of movement, freedom to choose their residence and to possess a nationality, including ensuring that older persons:
  - a. Have the opportunities and faculties required to exercise this right;
  - b. Have the right to acquire and change nationality and not be deprived of theirs in an arbitrary manner or due to age;
  - c. Not be deprived, for reasons of age, of their capacity to obtain, possess and use documentation related to their nationality or other identifying documentation, or for the use of pertinent procedures, such as immigration procedures, that may be necessary to facilitate the exercise of the freedom of movement;
  - d. Have the freedom to leave any country, including their own;

- e. Not be deprived, arbitrarily or due to age, the right to enter their own country.

### **Respect of Privacy**

1. No older persons, whatever their place of residence or type of situation, will be subject to arbitrary or illegal interference of their privacy, family, home, or correspondence or other types of communication, in illicit attacks to their honour and reputation, especially those persons in long-stay institutions. Older persons have the right to manage their affairs, according to their clinical condition evaluated by a competent professional and organize their personal space according to their wishes.

### **Freedom of expression, opinion and access to information**

1. Older persons must be able to exercise their right to freedom of expression and opinion, freedom to search, receive and offer information and ideas, in conditions of equality that other persons, and through the use of all forms of communications of their choice, including those available, at a reasonable cost, in case any disability manifests.
2. Participating states will take all legislative, administrative, judicial and other measures, above all in what concerns long-term institutions in relation to:
  - a. Informing older persons of their civil, political, economic, social, and cultural rights, of their fundamental freedoms and related legislation.
  - b. Inform older persons all of which concerns long-term institutions and the community to which they belong.
  - c. Facilitate contact of older persons with life outside long-term institutions.
  - d. Inform older persons on the consequences of their decisions, on the care they accept or not.
  - e. Receive news, and have access to radio and television, as well as general information through magazines or other publications and receive or acquire items for their daily life.

### **Accessibility**

1. Older persons have the right to live autonomously and participate fully in all aspects of life, appropriate measures must be taken to ensure access, in conditions of equality with everyone else, to physical means, transport, information and communication, including information technology and communication systems, as well as other services and installations open to the public, both in urban and rural areas.

### **Equality before the law**

1. Older persons have the right to be recognized anywhere as legal persons before the law. Older persons have the legal capacity in conditions of equality with others in all aspects of life. In case it is necessary, adequate means should be facilitated to enable older persons to exercise their legally-recognized rights.
  - a. All decisions that, due to cognitive loss, a person lacks legal capacity and all decisions that, as a consequence of such incapacity, will be assigned a legal representative, and afterwards have an fair hearing before a revision board.
  - b. The persons whose capacity is being dealt with will have the right to be represented by an advocate. If there is no such representation, one will be appointed with no charge whatsoever in the sense that they do not have sufficient means to pay such services. The advocate will not be able to represent in either a long-term institution or its personnel, nor will be able to represent a family member of the older persons whose capacity is being dealt with, unless the review board determines no conflict of interest exists.
  - c. Decisions on capacity and the need for a personal representative will be reviewed at reasonable intervals laid out by national legislation.
  - d. The persons whose capacity is being dealt with, their personal representative, if one exists, and any other person interested will have the right to appeal the review board's decision before a regular court.
2. Under no circumstances will older persons be considered totally incompetent to make their own decisions due to age, physical or mental health or their disability, if one exists.
  - a. Only under extraordinary circumstances will the right to older persons to make their own decisions be legally interrupted.
  - b. This suspension will be limited in time, subject to periodic reviews and applied only to specific decisions for which the review board has determined the lack of aptitude and need for surrogate consent.

**Access to justice (These contents originate, without intervention, directly from the II Follow-up Meeting of the Brasilia Declaration in Buenos Aires, Argentina)**

Access by older persons to justice, in equality of opportunity with other persons. In case it is necessary, the necessary means will be made to assist and speed up the access of older persons to justice.

- It is added that it must be stressed that it is not only access to justice, but to timely, quick and efficient justice.
- It is mentioned that justice is not equivalent to rights. The idea is of quick access to legal procedures, not only to justice. It is suggested to correct the wording so that it means the acceleration of legal procedures, not only justice.

- The proposal by Argentina is shared and it is clarified that the same happens with the concept of health.
- It proposes writing as access to timely, efficient, quick, priority and pertinent justice in function of the specificity of older persons. This will permit afterwards the adaptation of specific mechanisms. Mention must be made of the idea of priority access to justice. The specification of a few lines can be made, but leaving the term of access to justice, except in those cases in which exceptional measures prevail.
- It is proposed that the word "priority" be added, in relation to the advanced age of persons.
- The clarification is made in which access to justice there is judicial protection, legal guarantees and legal capacity. It is necessary to incorporate in some part of the Convention the topic of legal capacity and its review. There are many issues that are related to this, such as the importance of necessary guarantees to make access to justice possible. It is necessary to add content related to procedural guarantees.
- The following wording is proposed: "all older persons have the right to assign an advocate who represents them, including in all complaint and appeals procedures. If the older persons does not obtain those services, a no-cost advocate will be assigned in the sense that this person lacks sufficient means to pay." If necessary, the older persons will have the right to: a) the service of an interpreter; b) an independent ruling; c) oral and written proof; d) personally attend the hearing; e) a judgement without delay by an independent and impartial authority.

### **Legal protection and guarantees**

1. All older persons have the right to a simple and quick recourse or any other effective recourse before corresponding judges or courts, established by law, with due legal guarantees and within a reasonable amount of time, which protects against acts that violate their fundamental human rights and freedoms.

### **Work**

1. Older persons should have the opportunity to work or have access to obtain other possibilities of income.
2. In States in which mandatory retirement exists, States will promote legal reforms and financial incentives that allow the extension of work or the hiring of older persons further past the mandatory retirement age, in accordance with the activities performs and with the needs, capacities and preferences of older persons.
3. These measures will include, among others, reforms to the pension systems that permit more flexible retirement formulas, including partial or gradual retirement.

4. The age and conditions of retirement will be the same both for older men as well as women.
5. The established of differentiated ages for men and women will not be considered special measures permitted by the present Convention.
6. Governments, with the participation of employer and worker organizers, will take measures, including any necessary adjustments, so that older workers can, in the best measure possible, stay at a job in satisfactory conditions and benefit from employment security.
7. The work conditions and environment as well as schedules and organization of tasks, will take into account the characteristics of older workers.
8. Older persons, including those of retirement age, have the right to create, join and participate in workers' organizations, with the sole conditions of observing the states of these.
9. State must promote policies that encourage the participation or re-entry of older workers into the labour market.
10. Work or a job after the normal period of retirement must count on the same guarantees and be remunerated at the same applicable salary to all workers.
11. In the years previous to retirement, programs and measures that allow for an easy and gradual transition into retirement must be put in place, with the participation of representative workers and employer organizations and other interested bodies.
12. Governments will adopt measures and programs that recognize and promote the contributions made by older women and men through non-remunerated work in the informal sector and in the provision of domestic help.
13. Governments will regulate irregular or precarious forms of work, as well as different forms of self-employment and domestic help, with the aim to prevent abuse against older persons and guarantee them social coverage.

#### **Income, social security and retirement security**

1. Older persons have the right to social security, including retirement benefits and other means of social protections in case of disability, widowhood, and other cause of loss of subsistence through circumstances outside of a person's control.
2. Participating States will establish, within their means, to ensure that all older persons receive a permanent income, and at least, with a sufficient minimum. In case that they do not meet the requisites to enjoy an old age pensions or because they have not worked or covered the minimum period of required contributions, and lack any other source of income, they have the right to non-contributory old age benefits and other economic assistance.

#### **Priority attention**

1. Older persons have the right to necessary, immediate and individual attention and care in public and private service providers, adapting their services to their specific needs.
2. Priority in the designation of homes and lands to older person groups must be guaranteed.
3. The bodies and institutions of the State, including legal bodies, have the responsibility of providing due diligence to the processing of social benefit demands.

### **Protection of the family**

1. Older persons have the right to participate in family and community life. All necessary efforts must be made to support, protect, and strengthen families and help them, according to the cultural values of each society and tend to the needs of their older members.
  - a. In the planning and provision of care services to older persons must fully take into account the needs of interfamilial and other traditional forms of care, as well as the opinion of older persons.
  - b. States commit to support the social, economic and psychological well-being of older persons, persons infect by HIV/AIDS and the orphans made by this disease.
  - c. To such effect, access by older persons will be promoted to in-kind help, affordable health services, and loans, to permit them confront the needs of their children and grandchildren affect by HIV/AIDS.

### **Right to participate in political and public life**

1. Older persons have the right to actively participate in all political, economic, social, cultural and spiritual activities of the countries in which they live, according to their abilities, needs and preferences.
2. Older persons have the right to vote by facilitating their access to where elections are being held, putting special attentions to those whose movement requires third parties.
3. Older persons must be able to form their own movements or associations.
  - a. Participating States will stimulate the formation of such movements or associations, respecting their freedom of initiative, and will provide help of the legal and financial kind for the performance of their activities.

- b. States, civil society organizations and other implied actors, will promote the participation of older persons in intergenerational activities with other population groups.
  - c. Participating States will guarantee that older persons, men and women, through their representative associations or movements, actively participate in the formulation and application of legislative and political measures that directly affect their rights.
  - d. States will promote the participation of older persons, through their representative associations or movements, in the planning, implementations and evaluation of social development and poverty reduction policies.
4. Participating States will develop services, programs and activities of the social, cultural or sport kind specifically designed for older persons, especially those that live in care institutions, with the aim of promoting their self-realization and avoiding isolation, depending on their own characteristics and preferences.
    - a. Older persons will participate in the establishment, management and evaluation of such services programs or activities.
  5. States will promote the direct participation of older persons in the design and participation of official policies of ageing and the promotion of the rights of older persons.
  6. States will promote that older persons can provide services for the community, including through volunteer posts appropriate to their interests and capabilities.

#### **Right to participate in cultural life**

1. Older persons have the right to participate in cultural life and enjoy all the goods produced by culture, spiritual and material, artistic, literary and in the world of plastic and visual arts.
2. This Convention will promote the formulation of cultural policies created to open access for older persons to such goods.
3. States will promote education programs where older persons are the transmitters of knowledge, culture and spiritual values.

#### **Right to recreation, adequate use of free time and sport**

1. Older persons have the right to participate in recreational activities, the use of free time and sport. In terms of the latter, to maintain, if that is their wish, the same high level of competition of high-performance athletes. It is recommended to the National Olympic Committees to include older athletes, within official delegations, to regional, international and Olympic competitions.



## **The enjoyment of the highest level of physical and mental health**

1. Older persons have the right to enjoy the highest level of physical, mental, sexual and reproductive health, without age or economic discrimination. They must benefit fully of policies directed towards maintaining health, from the promotion of health, prevention of disease, integral attention and rehabilitation, up to assistance to the terminally ill. To make effective this right, the Participating States will commit to take the following measures
  - a. Formulate legal frameworks and mechanisms that carry out the protection of older persons in long-term care services;
  - b. Encourage the cooperation of Participating States of the present Convention and between them in terms of the strategic design and the exchange of capacities and resources to carry out their health and ageing plans;
  - c. Create strategies that integrate healthy personal and environmental habits during the entire life cycle to achieve active ageing;
  - d. Encourage the prevention and management of chronic diseases and other health problems of older persons;
  - e. Establish quality services for older persons in the process of strengthening health systems based on primary care;
  - f. Encourage the acquisition of health workers' skills in relation to the provision of these services to older persons;
  - g. Establish capabilities for other actors related to the follow-up and review of the health care of older persons;
  - h. Strengthen the technical capacity of the health authority for monitoring and evaluation of health care to the elderly population;
  - i. Promote the attainment and diffusion of necessary scientific evidence to adapt health interventions to national realities.

## **Education**

1. Older persons have the right to benefit from education programs at all levels and during their entire lives, and take advantage of their knowledge and experience for younger generations.
2. States will promote the development of adequate educational programs, materials and formats for older persons that reflect their preferences and needs, such as the utilization of information technologies and new agriculture techniques.

3. States will promote non-structured programs for older persons based in the community and oriented to dispersion, cultural and spiritual development, physical activities and other forms of creative use of free time.
4. Government must ease the access and active participation for older persons to cultural institutions and activities, both formal and informal, including volunteer activities.
5. States will promote active policies to combat against illiteracy of older persons, especially older women.
6. State will promote the access to education and training of older persons in new technologies, including the use of the internet.

### **Right to housing and a healthy living environment**

1. Older persons must have the possibility of living in secure, healthy and adaptable environments to their personal preferences and capacities and to their capacities to continual change.
2. States must guarantee the right of older persons to adequate housing, particularly in situations of crisis, emergency or relocation or evictions generated by development.
3. Older persons must be able to reside in their own homes for as long as possible.
4. Official housing policies will provide special attention to the specific needs of older persons, particularly those that live alone, through rent subsidies, housing co-operatives, housing renovation support and other pertinent measures.
5. States must guarantee protection against forced eviction and the human right to adequate housing and tenure security, which are guaranteed without any age discrimination.
6. Special attention must be paid to the mobility and the communication of older persons through the supply of adequate transport means.
7. Older persons have the right to a healthy environment that guarantees them access to clean water and air, and which minimizes their exposure to pollution.

### **Awareness/Awareness-raising**

1. States will recognize the authority, wisdom, productivity and other important contributions of older persons to society in their entirety, encouraging respectful and thankful treatment, with dignity and consideration.
2. States, in cooperation with older persons' associations, educational institutions, the media, and other civil society actors, will deploy efforts to overcome stereotypical language and images of older persons in all areas, diffusing an image

of these persons as self-sufficient, productive, and who contribute to the economic, social and cultural development of society.

3. States will cooperate with the media and publicity agents to promote a positive and realistic image of ageing and eliminate stereotypes against older persons.
4. Participating states will put into place programs to educate the general public of the ageing process and older persons. The participation of older persons and their associations or movements will be promoted in the design and formulation of such programs.
5. States will promote the inclusion of the issue of ageing in structured education curricula from the earliest age.

## **Rights of special interest to older persons**

### **The right to live independently and to be included in the community**

1. All older persons have the right to live in communities just like other people, and effective and appropriate measures must be taken, from an intergenerational approach, to facilitate older persons in the full enjoyment of this right and their full inclusion and participation in the community.
  - It is proposed that "and cultural" also be added.

### **The right to an adequate quality of life and access to social services and adequate social protection measures**

1. Older persons have the right to an adequate quality of life and social protection, as well as for their families, including food, water, housing, clothing, and adequate health care, as well as the constant improvement of their living conditions, through the provision of income, the support of their families and the community and their own self-sufficiency.
2. Social services must provide special care to older persons in consideration of their specific needs and characteristics, promoting maintenance, for the longest possible time, of the active and useful functions of these persons.
3. States must guarantee older persons physical access to basic social services. With such purpose:
  - a. They will carry out the necessary reforms to make buildings of such social services accessible.
  - b. Promote the access of social services to affordable transport for older persons, both in rural and urban areas.
  - c. States and international organizations will create and apply policies aimed at ensuring that all persons have sufficient economic and social protection in old age.
4. States will intensify their efforts to develop home assistance as complementary to institutional care, promoting it so older persons can stay in their own homes and maintain their independence.
5. States will promote volunteer activities for older persons, particularly in institutions specifically aimed at these persons, and with the participation of these persons.

## **Fundamental rights and freedoms of institutionalized persons**

### **Legal guarantees for older institutionalized persons**

1. Older persons have, the same as any other human being, the right to be assigned an advocate who will represent them, including representing all procedures carried out before human rights courts, review boards and other ordinary courts in relation to such a complaint, or appeal of a decision of the review board. If the person does not obtain those services, an advocate will be placed at their service without any charge in the sense that the person to whom is referred does not have sufficient means to pay.
2. The older person and their advocate can ask and present in any hearing an independent judgement on their physical and mental health and any other reports and oral, written or other evidence that are pertinent and admissible. Reports produced by professionals, interdisciplinary teams can be presented or those reports produced by review boards.
3. If necessary, the older person will have the right to the service of an interpreter. When such services are necessary and the person does not obtain it, one will be provided in the sense that the person does not have sufficient means to pay.
4. With the aim of facilitating the processing of any complaint, review or appeal, the older person and their advocate will be provided with copies of the patient's records and all reports and documents which must be presented, except in special cases in which the revelation of such information would gravely harm the health of the patient or put in danger the safety of their parties.
5. All documents that are not provided to the older person must be provided to the personal representative and the advocate of the patient, as long as it can be done confidentially. When communication is not made on any part of a document with the affected person, they and their advocate will be informed, as well as the reasoning of this decision, which is subject to the review of the review board or to legal review if it pertains.
6. The older person, their personal representative or advocate will have the right to personally attend the hearing and participate or be heard by them. Equally, if the affected person or their personal representative or advocate ask for the presence of a certain person at the hearing, that person will be admitted unless it is considered that their presence would gravely harm the health of the older persons or put third parties in danger.
7. The decision adopted in a hearing by a review board or any superior court and the reasoning of it will be expressed in writing. Copies will be provided to the older persons and their personal representative and advocate. If it is determined that the decision will be made public in whole or in part, full consideration will be made of the wishes of the older person, the need to respect their private life and of others, the public interest of the open administration of justice and the need to block any grave harm to general health of the older persons and not have the security of third parties.

8. On the basis of the right that every older person has to legal guarantees and legal protection, all interned persons in a long-term institution will have the right to request to leave such institution at anytime to a review board.
9. The review board will be an independent, impartial and multi-disciplinary body that at making their decisions will count on the assistance of independent experts both from the governmental sector as well as from civil society who will advise such a body. The Application Authority established by the national legislation will be in charge of coordinating the organization and its functioning within the long-term institutions and this will be comprised specifically by:
  - a. The initial review by the review board concerning the decision to admit or retain an older persons in a long-term institution; the determination of legal capacity and the need for substitute consent (if applicable) will be carried out within the 20 days of receiving the request to leave such institution. In each review, the review board will determine if the requirements are met for the retention of the person and the personal situation of each older persons in relation to their family (or possibilities of living somewhere else) and personal representatives and, in case it is determined, the older persons can leave and live in the community.
  - b. The review board will periodically examine the cases of persons admitted involuntarily.

#### **Informed consent**

1. No medical treatment will be administered to a person in a long-term institution without their informed consent, that of their personal representative or of the person that has been assigned by the older person to such effect except in the cases provided by the present convention.
2. The older person has the right to deny receiving treatment or to interrupt it, except in cases provided by the present convention. The above person will be explained the consequences of their decision to not receive or interrupt a treatment. The person who denies will not be encouraged or persuaded to renounce their right to give their informed consent. In case a person desires to do so, it will be explained that the treatment cannot be administered without their informed consent.
3. A proposed treatment plan may be applied without the informed consent of the person if in the moment of treatment, the person does not have the capacity to decide and does not have a legal or personal representative to give consent.
4. A treatment can be applied to any person without their informed consent as well if a qualified health professional, authorized by law and the independent authority, determines that this treatment is urgent and necessary to stop immediate or imminent damage to themselves or others. This treatment will not be applied

further than the period in which it is strictly necessary to achieve this purpose. In no case will they be applied involuntary treatment of psychosurgery or other irreversible treatments or clinical trials/experiments to any institutionalized older person.

5. When authorization is given to any treatment without the informed consent of the person, all efforts will be made to inform them about the nature of the treatment and any other possible treatment and to make it so the older person participates as soon as possible on the application of the treatment plan.
6. All treatments will have been immediately registered in the clinical history of the person and it will be indicated if such treatment is voluntary or involuntary.
7. The older persons or their personal representative or any national or legal person interested will have the right to appeal to the review board or any other legal body, whatever decision in relation to the treatment such a person has received.

### **Rights of specific groups**

#### **Older women**

1. Participating States recognize that older women are subject to multiple discrimination, while adding their age condition to the social-cultural patterns which have affected them throughout their lives by their condition of gender, and will take measures to ensure the full enjoyment of all the fundamental rights and freedoms established by the present Convention.
2. Also, older women will be included in the already existing binding instruments for the eradication of all forms of discrimination and violence against women, with the aim of deepening the particularities that affect them and so the protection mechanisms contemplate them.

#### **Older persons belonging to ethnic groups**

1. States will adopt effective measures, and when appropriate, special measures to ensure the continual improvement of the economic and social conditions of older indigenous persons in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.
2. States will adopt effective measures, and when appropriate, special measures to ensure the continual improvement of their economic and social conditions. Particular attention will be paid to the special rights and needs of older indigenous persons.
3. States, alongside indigenous peoples, will adopt immediate and effective measures to eliminate exploitative measures in respect to indigenous peoples, in particular older indigenous persons.

### **Older persons belonging to ethnic, national, linguistic or religious minorities.**

1. Older persons belonging to ethnic, national, linguistic or religious minorities, will have the right to enjoy all their rights, without any type of discrimination, and in measure that conform to their cultural, linguistic or religious particularities.

### **Risky situations and humanitarian emergencies**

1. States will take special assistance measures to guarantee the integrity and the rights of persons in situations of conflict and foreign occupation, in accordance human rights law and international humanitarian law, including through the provision of physical and mental rehabilitation services to disabilities caused by these situations.
  - a. Prisoners of war will have the right to special treatment in consideration of their age.
  - b. Older persons will not be subjected to prison camp work.
  - c. Older persons under the jurisdiction of foreign powers in situations of armed conflict or occupation will have the right so that their person, honour, family rights, religious convictions and practices, their habits and customs be respected, and with special consideration of their age.
  - d. In cases of internment, older persons will be held in buildings or cantonments with all hygiene and health guarantees and which effectively protect against the rigours of climate and the effects of War, having taken into account their age and health status.
  - e. Disciplinary punishment cannot be, in any case, inhumane, brutal or dangerous to the health of the interned and having taken into account their age.
  - f. Older persons have the right to asylum, without discrimination, with care of their special needs.
  - g. The collective reception of refugees will take into account, in the manner possible, the maintenance of the existing family composition, ensuring adequate measures in areas of housing and services.
2. States will include care for older persons in rescue plans in case of disaster and create national directives to such effect which include preparation for disasters, the training of rescue workers and the availability of goods and services.
3. States will provide priority attention to the needs of older persons in reconstruction situations after emergencies or conflicts.