

The Inter-American Convention on Protecting the Human Rights of Older Persons as a tool to promote the Decade of Healthy Aging



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Decade
of healthy
aging
in the Americas

Decade of Healthy Aging in the Americas
situation and challenges

The Inter-American Convention on Protecting the Human Rights of Older Persons as a tool to promote the Decade of Healthy Aging

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Convinced also that the adoption of a broad, comprehensive convention will contribute significantly to protecting, promoting, and ensuring the full enjoyment and exercise of the rights of older persons and to fostering an active ageing process in all regards.

Inter-American Convention on Protecting
the Human Rights of Older Persons

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The purpose of the series is to provide continuous updates on the different action areas of the Decade of Healthy Aging (2021-2030) in the Americas and other related aspects.

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¹ The opinions expressed in this paper are personal and do not necessarily reflect those of the General Secretariat of the Organization of American States, nor do they entail any commitment on the part of the General Secretariat.

Introduction

The aging of the world's population is a reality. According to data from the World Health Organization (WHO) (1), the number of older people is expected to double from 962 million to 2.1 billion by 2050 and triple to 3.1 billion by 2100.

By 2050, the number of people aged 65 and over worldwide will be almost the same as the number of children under 12. In Latin America and the Caribbean, the proportion of the population aged 65 and over could increase from 9% in 2022 to 19% by 2050 (2). The Economic Commission for Latin America (ECLAC) also reports that by around 2040 there will be more older people than children in the subregion (3).

Given this reality, the United Nations declared the period 2021-2030 as the Decade of Healthy Ageing with the aim of working together to improve the lives of older people, their families, and their communities (4). The Decade includes four key action areas covering the rights and protection of older persons.

It should be noted that the world was facing the COVID-19 pandemic when the Decade of Healthy Ageing was declared. The pandemic disproportionately affected older people and exposed the severity of existing gaps in policies, systems, and services, especially for groups in conditions of vulnerability, including older people with disabilities, indigenous people, Afro-descendants, and LGBTI people (5).

In addition, when the first human rights instruments were adopted, demographic aging was not as advanced as it is today. For example, the 1948 *Universal Declaration of Human Rights* does not refer to older persons directly, and the 1966 *International Covenant on Economic, Social, and Cultural Rights* also lacks explicit references to their rights (6, 7).

The discrimination, mistreatment, and even neglect that this population group sometimes suffers was not highlighted until recent decades. With this recognition, older persons came to be considered subjects with rights instead of objects of rights. In the 1980s, debates on the rights of older persons began to take place within international bodies. The United Nations General Assembly, for example, convened the first World Assembly on Ageing in 1982, producing a report with 62 recommendations, known as the *Vienna International Plan of Action on Ageing* (8). The Assembly also called for specific actions oriented towards older persons in areas including health and nutrition, consumer protection, housing and the environment, family, social welfare, income

and employment security, education, and research data collection and analysis. The *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights*—also known as the “*Protocol of San Salvador*”—created in 1988, includes Article 17, “Protection of the Elderly,” which recognizes that “everyone has the right to special protection in old age” (9).

Since then, numerous legal activities and instruments have recognized the rights of older persons:

- In 1990, the United Nations General Assembly adopted Resolution 45/106 (10), which, among other points, designated 1 October as International Day of Older Persons.
- In 1991, the United Nations General Assembly adopted the *United Nations Principles for Older Persons* (11), listing 18 rights of older persons under the themes of independence, social participation, care, self-fulfillment, and dignity.
- In 1992, the International Conference on Ageing met to revise the *Plan of Action* and adopted the *Proclamation on Ageing* (12).
- In 1999, the United Nations General Assembly proclaimed the *International Year of Older Persons* (13).
- In 2002, the *Political Declaration and Madrid International Plan of Action on Ageing* was adopted at the Second World Assembly on Ageing held in Madrid (14). The *Madrid International Plan of Action* calls for a change in attitudes, policies, and practices at all levels to harness the enormous potential of older persons in the 21st century. The Plan’s specific recommendations for action prioritize older persons and development, health and wellbeing in old age, and favorable and conducive environments for older persons.

In the same vein, the *Decade of Healthy Ageing* is based on structural frameworks that include the rights of older persons, such as the *Madrid Plan* (15), the *2030 Agenda for Sustainable Development* (16), and the *WHO Global Strategy and Action Plan on Ageing and Health 2016-2020* (17). Considering the variance in regulations across the Region of the Americas, a legally binding instrument to protect the human rights of older persons must be established.

The Road to the Convention

The process of developing the *Inter-American Convention on Protecting the Human Rights of Older Persons*, although brief when compared to other processes within the Organization of American States (OAS), has been no easy task.

The journey began in 2009 in Port of Spain (Trinidad and Tobago) during the Fifth Summit of the Americas. In the Summit Declaration, the heads of state and government of the Region of the Americas committed to reviewing the feasibility of creating an inter-American convention on the rights of older persons within the regional framework and with support from the Pan American Health Organization (PAHO) and the Economic Commission for Latin America and the Caribbean (ECLAC).

That same year, the OAS General Assembly instructed the Permanent Council to address in its agenda the reality of population aging and the specific needs of older persons—in particular promoting and protecting their rights, encouraging regional cooperation to identify their specific needs, and implementing appropriate public policies for their treatment—and urged the body to convene a special session of national representatives and experts from academia, civil society, and international organizations with the goal of sharing information and best practices and exploring the feasibility of developing an inter-American convention on the rights of older persons.

In 2010, the OAS General Assembly reiterated this need to the Permanent Council. Accordingly, the aforementioned special session was held in October of that same year with the participation of specialists from the OAS General Secretariat, the Inter-American Commission on Human Rights (IACHR), PAHO, the United Nations Population Fund (UNFPA), and civil society. Participants conducted a complex analysis of aging in the Americas and stressed the importance of strengthening regional cooperation to foster implementation of necessary policies in the Region.

As a result of that special session, in 2011, the OAS General Assembly instructed the Permanent Council to create a working group with a mandate to prepare a report before the end of the year analyzing the reality of older persons in the Region of the Americas and the effectiveness of binding universal and regional human rights instruments designed to protect their rights. The OAS Permanent Council instructed the Committee of Juridical and Political Affairs (CAJP) to fulfill the

mandate. The Committee, during a session on 22 September 2011, established the Working Group on Protection of the Human Rights of Older Persons.

After three years of negotiation, the Working Group's efforts culminated in May 2015 with finalizing development and negotiation of the *Inter-American Convention on Protecting the Human Rights of Older Persons*, thus fulfilling the assigned mandate.

The Working Group benefited from contributions from OAS member states, bodies, agencies, and entities; other regional bodies—in particular PAHO—; international organizations; and representatives of academia and civil society.

The Convention

The *Inter-American Convention on Protecting the Human Rights of Older Persons* is the first regional treaty that fully recognizes the human rights of older persons. “The purpose of this Convention is to promote, protect and ensure the recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons, in order to contribute to their full inclusion, integration, and participation in society” (18). By adopting the Convention, the OAS marked a historic milestone in promoting and protecting the human rights of older persons in the Region of the Americas and around the world.

The Convention, among other contributions, offers a legally binding definition of an *older person*: “A person aged 60 or older, except where legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years” (18). Having a broad definition while also setting a limit reflects the realities of the countries of the Region. Given the continuing decline in fertility and mortality in these countries, priority will be given to the human rights of older persons, rather than economic policies aimed at raising the retirement age.

On this subject, ECLAC reports that retirement and pension systems coverage in Latin America is very low and varies significantly, depending on place of residence (19). In most countries, social security coverage is not only low, but also excludes a considerable part of the older population, particularly people living in poverty. The report also highlights significant differences between men and women regarding retirement income and pensions.

The United Nations observes that thousands of older persons in the Region experience discrimination and neglect, especially women, Afro-descendants, indigenous people, refugees, displaced and stateless people, LGBTI people, and people with disabilities. These groups are exposed to discrimination on multiple fronts (20). Article 2 of the Convention provides the following legally binding definition of *age discrimination in old age*:

Any distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life (18).

The convention is an important instrument for enhancing protection of older persons in the Region of the Americas. With this in mind, and in conjunction with the *Decade of Healthy Ageing*, WHO, along with other United Nations agencies, (21) published its *Global Report on Ageism*. Alongside the *Global Campaign to Combat Ageism*, this constitutes a global movement that seeks to change the way we think, feel, and act with respect to age and aging, with the aim of building a world for all ages (20, 21).

Ageism

Ageism refers to the stereotypes (how we think), prejudice (how we feel) and discrimination (how we act) directed towards others or oneself on the basis of age. Ageism is also a major barrier to enacting effective policies and actions. Both young and old people experience ageism, although it takes on different forms during the life course. Ageism intersects with other biases, such as ableism, sexism, and racism, exacerbating existing inequalities and further excluding older persons from society. There is evidence that one in two individuals is ageist against older persons. For these older persons, ageism is associated with many negative outcomes, including a lower quality of life and an increased risk of violence and abuse. The *Global report on ageism* summarizes the best available evidence and provides an opportunity for stakeholders to invest in evidence-based strategies to reduce ageism. It is a key product of the global campaign and provides a framework for preventing and countering ageism through three strategies that have demonstrated previous success: policies and laws, educational activities, and intergenerational interventions.

Source: Pan American Health Organization. Global report on ageism. Washington, D.C.: PAHO; 2021. Available from: <https://www.paho.org/en/documents/global-report-ageism>.

The Convention also defines other important concepts for promoting the human rights of older persons, such as abandonment, palliative care, abuse, neglect, old age, aging, the domestic unit or household, older people receiving long-term care, and integrated social and health services.

Recognition of the specific rights of older persons is one reason why the Convention is undoubtedly important and relevant. OAS member states have recognized 27 specific rights for this group:

1. Equality and non-discrimination on the basis of age.
2. Right to life and dignity in old age.
3. Right to independence and autonomy.
4. Right to participation and community integration.
5. Right to safety and a life free of violence of any kind.
6. Right to not be subjected to torture or cruel, inhuman, or degrading treatment or punishment.
7. Right to give free and informed consent on health matters.
8. Rights of older persons receiving long-term care.
9. Right to personal liberty.
10. Right to freedom of expression and opinion, and access to information.
11. Right to nationality and freedom of movement.
12. Right to privacy and intimacy.
13. Right to social security.
14. Right to work.
15. Right to health.
16. Right to education.

17. Right to culture.
18. Right to recreation, leisure, and sports.
19. Right to property.
20. Right to housing.
21. Right to a healthy environment.
22. Right to accessibility and personal mobility.
23. Political rights.
24. Freedom of association and assembly.
25. Rights of older persons in situations of risk and humanitarian emergencies.
26. Right to equal recognition before the law.
27. Right of access to justice (18).

Through the Convention, States have also acknowledged their commitment to promote the full exercise of the rights of older persons in the Region of the Americas. To this end, they must “Adopt and strengthen such legislative, administrative, judicial, budgetary, and other measures as may be necessary...including adequate access to justice, in order to ensure differentiated and preferential treatment for older persons in all areas,” as well as promote “...public institutions specializing in the protection and promotion of the rights of older persons and their integral development,” “...the gathering of adequate information, including statistical and research data, with which to design and enforce policies,” and encourage “...the broadest participation by civil society and other social actors, especially older persons, in the drafting, implementation, and oversight of public policies and laws to implement this Convention” (18). The *Decade of Healthy Aging* accordingly emphasizes the importance of data for monitoring measures and prioritizing actions.

One noteworthy commitment by States was adopting affirmative action and providing reasonable accommodations for the exercise of the rights recognized in the Convention. The Convention created a Committee of Experts and a Conference of States Parties to design measures to monitor the recognition of rights and states’ obligations.

The same legal instrument stipulates the following in case of alleged violation of the rights recognized in the Convention:

Any person or group of persons, or nongovernmental entity legally recognized in one or more member states of the Organization of American States may submit to the Inter-American Commission on Human Rights petitions containing reports or complaints of violations of the provisions contained in this Convention by a State Party (18).

In 2017, the Inter-American Commission on Human Rights (IACHR) decided to create the Unit on the Rights of Older Persons. In 2019, the Unit became the Thematic Rapporteurship on the Rights of Older Persons to expand and deepen the existing institutional framework for monitoring the protection of the rights of older persons within the Commission. Its main mandate is to promote, protect, and ensure the recognition of the human rights of older persons in the Region.

The OAS General Secretariat plays an important complementary role in promoting the rights of older persons, specifically through the Department of Social Inclusion under the Secretariat for Access to Rights and Equity. This area is responsible for advancing the rights and social inclusion of older persons, using the Convention as a framework for action.

The Department of Inclusion has provided promotional and training activities on the Convention while forming strategic alliances with international organizations, national entities, academia, and civil society. All efforts are directed to promoting the rights enshrined in the Convention, adding more countries to the list of States Parties, and raising awareness about the Convention as a tool for developing public policies aimed at older persons.

As of the publication date of this report, the Convention has been ratified by 8 of the 34 OAS Member States: Argentina, Plurinational State of Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Peru, and Uruguay.

To counter abuse and the violation of the human rights of older persons, more States must ratify or accede to this inter-American instrument. The monitoring mechanism established in the Convention will not take shape until the OAS receives the tenth instrument of ratification or accession. The mechanism will primarily contribute to monitoring the progress of the States Parties in fulfilling the commitments described in the Convention and fostering protection of the rights of older persons in the Region of the Americas.

The Convention and the Decade of Healthy Aging

The Convention offers an important definition of *active and healthy aging*. This concept was introduced by the World Health Organization (WHO) in the late nineties to raise awareness of a new approach to old age (21). The Convention provides the following definition:

The process of optimizing opportunities for physical, mental, and social well-being, participation in social, economic, cultural, spiritual, and civic affairs, and protection, security, and care in order to extend healthy life expectancy and quality of life for all people as they age, as well as to allow them to remain active contributors to their families, peers, communities, and nations. It applies both to individuals and to population groups (18).

In 2015, the WHO *World Report on Ageing and Health* (22) updated the definition of healthy aging, defining the concept as “the process of developing and maintaining the functional ability that enables well-being in older age.” Functional ability comprises all health-related attributes that enable people to be and to do what they have reason to value. It depends on the physical and mental capacities of the individual (intrinsic capacity) and the environment, considered in a broad sense, including laws and protection mechanisms (22).

The human rights recognized in the Convention are linked to the action areas for the Decade of Healthy Ageing. For example, action area I—“change how we think, feel and act towards age and ageing” (23)—is related to Article 32 of the Convention, in which States Parties agree to:

- b) Foster a positive attitude to old age and dignified, respectful, and considerate treatment of older persons, and, based on a culture of peace, encourage actions to disseminate and promote the rights and empowerment of older persons, and avoid stereotypical images and language in relation to old age.
- c) Develop programs to sensitize the public about the ageing process and older persons, encouraging the participation of the latter and of their organizations in the design and formulation of such programs.
- d) Promote the inclusion of content that fosters understanding and acceptance of ageing in study plans and programs at different levels of education, as well as in academic and research agendas (18).

The Convention also prohibits age-based discrimination towards older persons and recognizes their rights to life and dignity in old age, independence and autonomy, and participation and community integration (18).

In line with action area II—“ensure that communities foster older people’s abilities” (23)—the Convention recognizes the following rights: work; education; culture; recreation, leisure, and sports; participation and community integration; and a healthy environment.

Action area III—“deliver person-centered integrated care and services that respond to older people’s needs” (23)—is tied to the right to health recognized in the Convention. To give effect to this right, States Parties undertake to:

- a) Ensure preferential care and universal, equitable and timely access to quality, comprehensive, primary care-based social and health care services, and take advantage of traditional, alternative, and complementary medicine, in accordance with domestic laws and with practices and customs.
- b) Formulate, implement, strengthen, and assess public policies, plans, and strategies to foster active and healthy aging.
- c) Foster public policies on the sexual and reproductive health of older persons.
- d) Encourage, where appropriate, international cooperation in the design of public policies, plans, strategies and legislation, and in the exchange of capacities and resources for implementing health programs for older persons and their process of aging.
- e) Strengthen prevention measures through health authorities and disease prevention, including courses on health education, knowledge of pathologies, and the informed opinion of the older person in the treatment of chronic illnesses and other health problems.
- f) Ensure access to affordable and quality health care benefits and services for older persons with non-communicable and communicable diseases, including sexually transmitted diseases.
- g) Strengthen implementation of public policies to improve nutrition in older persons.

- h) Promote the development of specialized integrated social and health care services for older persons with diseases that generate dependency, including chronic degenerative diseases, dementia, and Alzheimer’s disease (18).

Finally, in accordance with action area IV—“provide access to long-term care for older people who need it” (23)—the Convention recognizes the rights of older persons receiving long-term care services. To give effect to this right, States Parties undertake to:

- a) Establish mechanisms to ensure that the initiation and conclusion of long-term care services are subject to an indication by the older person of their free and express will.
- b) Ensure that such services have specialized personnel who can provide appropriate, comprehensive care and prevent actions or practices that could cause harm or exacerbate an existing condition.
- c) Establish an appropriate regulatory framework on the operations of long-term care services that allows the situation of older persons to be assessed and supervised [...]
- d) Adopt appropriate measures, as applicable, to ensure that older persons receiving long-term care also have palliative care available to them that encompasses the patient, their environment, and their family (18).

Conclusions

The *Inter-American Convention on Protecting the Human Rights of Older Persons* is a contribution from the Region of the Americas to international human rights law that will aid significantly in promoting, protecting, and ensuring the full enjoyment and exercise of the rights of older persons and to fostering active and healthy aging in all areas.

However, the Convention should not remain as a mere written document or a declaration of good intentions. The Member States of the Organization of American States, international organizations, academia, and associations of older persons must work together to convince more countries to adhere to the Convention and implement it effectively so that millions of older persons can exercise their rights.

The Decade of Healthy Ageing is an opportunity to strengthen the work being done in the Region and to unite various leaders, organizations, and actors to work together to achieve its main goal: to improve the lives of older persons, their families, and the communities in which they live.

We must ensure the recognition, protection, and full enjoyment and exercise of human rights. If a positive attitude toward old age is fostered, as the Convention and the Decade propose, older persons will continue to contribute to building inclusive, just, and diverse societies in the Region of the Americas.

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This report aims to outline the current available knowledge on the health and wellbeing of older persons in the Region of the Americas during the United Nations Decade of Healthy Ageing (2021-2030). It also seeks to guide political actions towards ensuring the human rights of older persons, and describes the negotiation and drafting process behind the Inter-American Convention on Protecting the Human Rights of Older Persons.

It reports on the doctrinal and legal developments that led the Region of the Americas to draft the Convention and describes its action areas and guaranteed rights, as well as the obligations assumed by the States Parties. The Convention is an essential tool to advance the strategies of the Decade of Healthy Ageing. This publication reflects on the importance of having a major legal instrument for this purpose at the international level.

The demographic transition in Latin America and the Caribbean will continue to shape the ability of countries and health systems to respond to the needs of the population. Given this reality, international instruments will be needed to guarantee the full enjoyment of the human rights of older persons. In order to design inclusive and sustainable systems, accurate, updated, and effective information is required. The Decade of Healthy Ageing--the initiative that constitutes the framework for this document-- is a strategic period in which to focus on data generation and monitoring.