
3. The Inter-American Convention on the Protection of the Human Rights of Older Persons – a step towards an international convention on the rights of older people?

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INTRODUCTION

According to the World Health Organization, older people currently represent 12 per cent of the global population. By 2050, this figure is expected to increase to 22 per cent; that is, from 605 million to 2 billion. Among them, 434 million will be 80 years old or older, and 80 per cent will live in low- and middle-income countries.¹ In the inter-American region, during the 1950s, people aged 60 and over made up 5.4 per cent of the total population. By 2045 this proportion will have quadrupled, reaching 19.8 per cent.²

Latin American countries have been concerned to ensure that this greater longevity is also reflected in a better quality of life for older people. However, unlike in many other parts of the world, Latin American countries, mainly led by Argentina, Uruguay, Chile, México, Costa Rica and Brazil, determined that this necessitated the implementation of mandatory instruments that respect and promote older people's human rights both nationally and in the Latin American region. It should be noted that the African Union has also sought to protect the rights of older people under the 2016 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.³

The Inter-American Convention on the Protection of the Human Rights of Older Persons is an international treaty which emanated from the General Assembly of the Organization of American States (OAS), adopted in 2015 in Washington, DC, US.⁴ The chapters of the instrument are summarized in Table 3.1.

¹ *Ageing and Health*, WORLD HEALTH ORG. (2021), www.who.int/news-room/fact-sheets/detail/ageing-and-health.

² *Panorama del envejecimiento y tendencias demográficas en América Latina y el Caribe*, ECON. COMM'N FOR LATIN AM. & THE CARIBBEAN (Jan. 10, 2023), www.cepal.org/es/enfoques/panorama-a-envejecimiento-tendencias-demograficas-america-latina-caribe?utm_source=CiviCRM&utm_medium=email&utm_campaign=20230308_boletin_envejecimiento_20.

³ African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (Jan 31, 2016).

⁴ Signatories and Ratifications, Inter-American Convention on Protecting the Human Rights Of Older Persons, ORG. AM. STATES, www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp.

Table 3.1 Chapters of the Inter-American Convention on the Protection of the Human Rights of Older Persons

Chapters	Topics
Chapter I: Purpose, Scope, and definitions (articles 1–2)	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.
Chapter II: General Principles (article 3)	Promotion and defense of the human rights and fundamental freedoms of older persons; Recognizing older persons, their role in society, and their contribution to development.
Chapter III: General Duties of States Parties (article 4)	Adopt measures to prevent, punish, and eradicate practices that contravene this Convention; Adopt affirmative measures and make such reasonable adjustments as may be necessary for the exercise of the rights established in this Convention and shall refrain from adopting any legislative measure that is incompatible with it; Adopt and strengthen such legislative, administrative, judicial, budgetary, and other measures as may be necessary to give effect to and raise awareness of the rights recognized in the present Convention.
Chapter IV: Protected Rights (articles 5–31)	Equality and non-discrimination for reasons of age; Right to life and dignity in old age; Right to independence and autonomy; Right to participation and community integration; Right to safety and a life free of violence of any kind; Right to give free and informed consent on health matters; Rights of older persons receiving long-term care; Right to privacy and intimacy; Right to social security; Right to work; Right to health; Right to education; Right to culture; Situations of risk and humanitarian emergencies; Access to justice, among others.
Chapter V: Awareness-Raising (article 32)	Adopt measures to achieve dissemination of, and to progressively educate the whole of society about, this Convention.
Chapter VI: Follow up mechanism to the conventions and means of protection (articles 33–36)	The Follow-up Mechanism shall be established upon deposit of the tenth instrument of ratification or accession. Currently the countries that have ratified or accessed are: Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Perú and Uruguay.
Chapter VII: General provision (articles 37–41)	Signature, ratification, and entry into force; Reservations; Denunciation; Depository; Amendments.

Older people are not an homogenous group. The experience of ageing and older age is influenced by a wide range of factors, including social and economic status and key life events.⁵ Older people are diverse and it is important to remember this in discussions about their human rights.⁶ There are significant concerns about the human rights of older people, and these have been heightened within the context of COVID-19, particularly in relation to older people’s rights to social security and pensions; to non-discrimination, including during humanitarian emergencies; to life; to health; to equally good care and support; and to protection from neglect

⁵ Sally Hopewell et al., *Multifactorial and Multiple Component Interventions for Preventing Falls in Older People Living in the Community*, 2018 COCHRANE DATABASE SYS. REV. CD012221 (July, 2018).

⁶ ÁNGELA ARENAS MASSA, *ADULTO MAYOR: NUEVAS PERSPECTIVAS PARA EL DESARROLLO HUMANO (NEW PERSPECTIVES FOR HUMAN DEVELOPMENT)* (1st ed., 2012).

and abuse.⁷ There is currently no international convention on the rights of older persons (see Chapter 2 in this collection). At the present time, the United Nations has only created the United Nations Principles for Older Persons,⁸ as well as guidelines and recommendations from the Independent Expert on the enjoyment of all human rights by older persons.⁹

This chapter aims to describe the political and legal evolution of the rights of the older persons in the Latin American region up to the arrival of the Inter-American Convention. It will then, based on this context, discuss the possibility of this treaty becoming the basis for a universal convention on the human rights of older people. The chapter concludes that this will be essential to adequately raise awareness about human rights issues concerning older populations.

THE POLITICAL AND NORMATIVE EVOLUTION OF THE RIGHTS OF OLDER PERSONS IN THE LATIN AMERICAN REGION

The purpose of this section is to illustrate the universal guidelines that served as the basis and inspired the countries of the Organization of American States to generate a Convention on the protection of the human rights of older persons.

United Nations and Human Rights Instruments

The Universal Declaration of Human Rights (1948)¹⁰ states in Article 25.1 that

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹¹

The International Covenant on Economic, Social and Cultural Rights also contains and recognizes the right to equality between men and women regarding the enjoyment of economic, social and cultural rights (Article 3), to work (Article 6), to social security (Article 9), to an adequate standard of living, including food, clothing and housing (Article 11), to the highest possible level of physical and mental health (Article 12), to education (Article 13), to participation in cultural life and to benefit from scientific progress (Article 15), among others.

In addition to the above, there are different international declarations on the rights of older persons carried out in the framework of: the Fourth World Conference on Women (Beijing, 1995);¹² United Nations Conference on Human Settlements (HABITAT II) (1996); the Convention on the Elimination of All Forms of Discrimination against Women (1979); and the

⁷ UN SUSTAINABLE DEV. GRP., POLICY BRIEF: THE IMPACT OF COVID-19 ON OLDER PERSONS 3 (2020)

⁸ GA Res. 46/91, Principles for Older Persons (Dec. 16, 1991).

⁹ *Independent Expert on the Enjoyment of all Human Rights by Older Persons*, UNITED NATIONS, www.ohchr.org/en/special-procedures/ie-older-persons.

¹⁰ GA Res. 217 (III) A Universal Declaration of Human Rights (Dec. 10, 1948).

¹¹ *Id.*, at art. 25.1.

¹² FOURTH WORLD CONFERENCE ON WOMEN, www.un.org/womenwatch/daw/beijing/.

Convention on the Rights of Persons with Disabilities (CRPD) (2006). All these international instruments are general ones and do not generally directly refer to older people. The CRPD only refers to older people twice, in relation to equitable access to services, in Articles 25(b) and 28.2(c). However, the CEDAW Committee, in response to criticisms about CEDAW's omissions in relation to older women, subsequently produced General Recommendation No. 27 on Older Women and Protection of their Human Rights in 2010.¹³

Within the universal international guidelines, in 1991 the United Nations approved a series of principles in relation to the human rights of older people.¹⁴ These are aspirational and non-binding. There are 18 principles, under the following headings: independence; participation; care; self-fulfilment; and dignity.¹⁵

The World Assembly on Ageing in Madrid (2002)¹⁶ developed an International Plan of Action (MIPAA) that is an agenda which addresses the full realization of all human rights and fundamental freedoms by older people. The Plan focuses on three priority areas: 'older persons and development; advancing health and well-being into old age; and ensuring enabling and supportive environments'.¹⁷ Heterogeneity in old age is recognized. The Plan seeks the elimination of all forms of violence and discrimination against older persons and reaffirms a commitment to gender equality. There is recognition of the importance of older people for the social development of families and interdependence, solidarity and reciprocity between generations. The Plan also addresses health care and social protection for older people, the use of research and scientific knowledge and harnessing the potential of technology to the benefit of older people, among other things.

Additionally, the Toronto Declaration on the Global Prevention of Elder Abuse (2002) highlighted the widespread abuse of older people and proposed a Call to Action to address it.¹⁸ It considers improving professional education to be essential, as well as raising awareness via the media, to combat stigma and taboos and help to eliminate negative stereotypes about older age. Both MIPAA and the Toronto Declaration have influenced the creation of international human rights instruments on the Latin American continent.

¹³ Comm. on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/GC/27 (Dec. 16, 2010).

¹⁴ UN Principles for Older Persons, *supra* note 8.

¹⁵ All of the stated principles are found in the following resolutions: G.A. Res. 3447 Declaration on the Rights of Disabled Persons (Dec. 9, 1975); Res. 46/91, Principles for Older Persons (Dec. 16, 1991); GA Res. 47/5, Proclamation on Aging (Oct. 16, 1992); GA Res. 50/141, International Year of Older Persons: Towards a Society for All Ages (Jan. 30, 1996); Political Declaration and Madrid International Plan of Action on Ageing, Second World Assembly on Ageing (Apr. 8–12, 2002).

¹⁶ Political Declaration and Madrid International Plan of Action on Ageing, Second World Assembly on Ageing (Apr. 8–12, 2002).

¹⁷ *Id.*

¹⁸ World Health Org. Toronto Declaration for the Total Prevention of Elder Abuse (Nov. 17, 2002).

Inter-American Human Rights Instruments

The main Latin American human rights legal instruments are: the American Declaration of the Rights and Duties of Man (Bogotá, 1948);¹⁹ the American Convention on Human Rights or Pact of San José, Costa Rica (1969);²⁰ the Inter-American Convention to Prevent and Punish Torture (Cartagena de Indias, 1985);²¹ the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Belém do Pará, 1994);²² the Inter-American Convention on Forced Disappearance of Persons (Belém do Pará, 1994);²³ and the Inter-American Convention on all Forms of Discrimination and Intolerance (Guatemala, 1999),²⁴ among others. These inter-American instruments are general and do not specifically refer to older people.

The First Regional Intergovernmental Conference on Ageing in the Latin American and Caribbean region (Santiago de Chile, 2003)²⁵ gave rise to a series of instruments issued in the region, such as the Declaration of the Special Committee of the Economic Commission for Latin America and the Caribbean (ECLAC) on Population and Development.²⁶ In response to Resolution 644 (XXXII) of 2008, the Committee focused on ‘Population and Health in Latin America and the Caribbean: Challenges and New Challenges’ as the central theme.

The interest and willingness of governments to promote an international treaty to protect older people was formally pronounced in the Brasilia Declaration, and approved at the Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean, organized by the Economy Commission for Latin America and the Caribbean and the Government of Brazil in 2007.²⁷ Subsequently, the first session of the Regional Conference on Population Development in Latin America and the Caribbean ‘Full integration of population dynamics into rights-based sustainable development with equality: key to the Cairo Programme of Action beyond 2014’ was organized by ECLAC and the Government of Costa Rica. The first session was held in Montevideo, Uruguay, from 12 to 15 August 2013 and had the support of the United Nations Population Fund (UNFPA). In this conference the

¹⁹ American Declaration of the Rights and Duties of Man, Adopted by the Ninth International Conference of American States, Bogota, Columbia, 1948.

²⁰ American Convention on Human Rights ‘Pact of San José, Costa Rica’, *adopted* Nov. 22, 1969, 1144 UNTS 123.

²¹ Inter-American Convention to Prevent and Punish Torture 25 ILM 519 (Dec. 9, 1985).

²² Inter-American Convention to Prevent, Punish and Eradicate Violence against Women ‘Convención Belém do Pará’, ORG. AMER. STATES (June 9, 1994).

²³ Inter-American Convention on Forced Disappearance of Persons 33 ILM 1529 (June 9, 1994).

²⁴ Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, June 8, 1999 AG/RES. 1608 (XXIX-O/99).

²⁵ ECLAC, Regional Intergovernmental Conference on Ageing (Nov. 10, 2003). www.cepal.org/en/eventos/conferencia-regional-intergubernamental-envejecimiento.

²⁶ ECLAC, Special Committee on Population and Development: Chile 2010 (May 10, 2010).

²⁷ Econ. Comm’n for Latin Am. & the Caribbean, Brasilia Declaration, Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean: Towards a Society for All Ages and Rights-based Social Protections, UN Doc. LC/G.2359 (Jan 2008) [hereinafter Brasilia Declaration].

Montevideo Consensus on Population and Development was approved.²⁸ The Third Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean was organized by ECLAC and the Government of Costa Rica. The Conference was held in San José, Costa Rica, from 8 to 11 May 2012 and had the support of the United Nations Population Fund (UNFPA). At this Conference, the San José charter on the rights of older people in Latin America and the Caribbean was approved.²⁹

The Brasilia Declaration followed on from MIPAA, emerging in Latin America and the Caribbean as a basic document for the generation of public policies in the region, validating the above-mentioned provisions and translating them into practical actions, while still, respecting the territoriality and reality of each country.³⁰ The Convention suggested that measures be adopted at the local, national and regional levels, in three priority areas for older people: development; health and well-being; enabling and supportive environments.

At the time, the Brasilia Declaration served as the basis for the subsequent drafting of both the Inter-American Convention on the Protection of the Human Rights of Older Persons, and the Convention on the Rights of Persons with Disabilities (2008).³¹ The latter is also relevant to older people, given that many older people are affected by disabilities, especially in very old age.

All of the above Latin American instruments which specifically mention older persons are non-mandatory. However, the Inter-American Convention on the Protection of the Human Rights of Older Persons is, by contrast, unique in being a binding instrument.³² It includes the following rights:

1. Right to life and dignity in old age (Article 6), expressly guaranteeing palliative care. This provision is consistent with Article 4 of the American Human Rights Convention, and Article 4 of the Universal Declaration on Human Rights, both of which protect the right to life.
2. Right to independence and autonomy (Article 7), already recognized in the UN Principles for Older Persons, and emphasizing decision-making in accordance with an older person's traditions and beliefs.
3. Right to long-term care services (Article 12), which seeks to respond to structural and individual mistreatment, which can occur in long-term care facilities in particular.

Second, there is another group of rights – political and civil – which have been considered with precedence in international human rights law, for example in the International Convention

²⁸ Econ. Comm'n for Latin Am. & the Caribbean (ECLAC), *Montevideo Consensus on Population and Development*, UN Doc. LC/L.3697 (Aug. 2013) (discussing full integration of the population and its dynamics in sustainable development with equality and a rights-based approach).

²⁹ Econ. Comm'n for Latin Am. & the Caribbean, *San José Charter on the Rights of Older Persons in Latin America and the Caribbean* (May 2012).

³⁰ Brasilia Declaration, *supra* note 27.

³¹ Convention on the Rights of Persons with Disabilities, 2515 UNTS 3 (2008).

³² Inter-American Convention on Protecting the Human Rights of Older Persons (A-70), ch. IV, art. 5, ch. V, art. 32 (b), June 15, 2015, 55 ILM 985.

on the Rights of Persons with Disabilities (2008). However, the Inter-American Convention reinterprets such rights with specific reference to older people. These are:

1. Right to equality and non-discrimination based on age (Article 5).
2. Right to free and informed consent in matter of health (Article 11), constitutes a manifestation of autonomy.
3. Right to security and life without violence (Articles 9 and 10). Emphasis is placed on the fact that domestic violence regulations must consider older persons as possible victims, and not only (younger) women and children.

Third, there are two rights that had not previously specifically addressed older people:

1. Right to accessibility and personal mobility (Article 26).
2. Guarantee in situations of risk and humanitarian emergencies (Article 29).

To understand the application of the Inter-American Convention on Human Rights, it is important to locate it within the context of the Inter-American Human Rights System, the regional human rights system which is responsible for monitoring, promoting and protecting human rights in the 35 countries that are members of the OAS.³³ The Inter-American Human Rights System comprises the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). The system has two peculiarities. First, it encompasses the protection of human individuals across the lifecourse, ‘in general, from the moment of conception’ (Article 4 of the Inter-American Convention on Human Rights).³⁴ Second, it is based on the contributions of its indigenous peoples.³⁵ In its rulings, the Inter-American Court has formulated guidelines for interpreting the rights contained in the Convention when a case relates to indigenous or tribal peoples, the principle of equality and non-discrimination and the impact of cultural identity.³⁶ In addition, in a case from 2005, the Court has ordered special protection measures for indigenous children and older people.³⁷ Both aspects are relevant when referring to the rights of older people in the region.

The Inter-American Court of Human Rights, based in San José, Costa Rica, initially ruled on the crime of forced disappearance, which has left wounds in recent history in many parts of the region. More recently, attention has been focused on issues such as extrajudicial executions, torture, violations of due process, children’s rights, nationality rights, freedom of expression and the rights of indigenous people.³⁸ The Court has also recently addressed issues such as workers’ rights, private property, the relationship of indigenous people with their

³³ *Inter-American Human Rights System*, INT’L JUST. CTR., <https://ijrcenter.org/regional/inter-american-system/>.

³⁴ Org. Of Am. States (OAS), *Convención Americana de Derechos Humanos* (‘Pacto de San José de Costa Rica’) Nov. 22, 1969, 1144 UNTS 123, OASTS No. 36.

³⁵ Pedro Nikken, *International Systems for the Protection of Fundamental Rights: The Perspective of Access to Justice and Poverty* 48 INTER-AMERICAN INST. OF HUM. RTS. MAG. 64 (2008).

³⁶ INTER-AMERICAN COURT OF HUMAN RIGHTS. JURISPRUDENCE BOOKLET, NO. 11: INDIGENOUS AND TRIBAL PEOPLES, www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo11.pdf.

³⁷ *Yakye Axa Indigenous Cmty. v Paraguay*, Merit, Reparations and Costs, Judgment. Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005).

³⁸ NICOLÁS Y. ESPEJO & CARLA G. LEIVA, *DIGESTO DE JURISPRUDENCIA DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS* (ENERO 1984–FEBRERO 2012) I-VI (2012).

lands, migrants' rights, children's rights, women's rights, LGBTQ+ rights, the rights of people with disabilities and the rights of older people.

Regarding older people, the Inter-American Court of Human Rights applied the Inter-American Convention on the Protection of the Human Rights of Older Persons for the first time in a 2018 court case, *Poblete Vilches v Chile*.³⁹ The case concerned Mr Vinicio Antonio Poblete Vilches, an old man who died in 2001 of septic shock and bilateral bronchopneumonia after being treated in a public hospital in Santiago, Chile. His family claimed that the physicians treating Mr Vilches were responsible for his death. They claimed he had been subjected to extreme neglect, being deprived of food and left naked, drugged and unconscious with his hands and legs tied to restrain him, and that he was subsequently prematurely discharged from hospital. The family also claimed that there had been a subsequent judicial cover-up, after a series of failed investigations. The Court concluded that there was sufficient evidence to consider that the decision to discharge Vinicio Antonio Poblete Vilches, and the way in which this was carried out, could have contributed to the rapid deterioration he experienced in the days immediately following his discharge from the hospital and his subsequent death after he was admitted a second time in a serious condition. It also determined that the State was responsible for failing to provide him with the intensive treatment required during his second admission to hospital, and for the fact that, in the domestic sphere, the investigations were not conducted with due diligence and within a reasonable time. The presumed victims in this case, in addition to Vinicio Antonio Poblete Vilches, are: his wife, Blanca Tapia Encina (deceased subsequent to Mr Vilches); and his sons and daughter, Gonzalo Poblete Tapia (also deceased subsequent to Mr Vilches), Vinicio Marco Poblete Tapia and Cesia Poblete Tapia.

The ruling established that the Chilean State was responsible for the violation of Mr Poblete Vilches' right to health; for the violation of the right to life, to the detriment of Mr Poblete Vilches; for the violation of the right to personal integrity, to the detriment of Mr Poblete Vilches; and for the violation of the right to obtain informed consent and access to health information, to the detriment of Mr Poblete Vilches and his relatives. It was also responsible for the violation of Mr Poblete Vilches' personal integrity, to the detriment of his relatives mentioned above.

The ruling explicitly developed criteria related to informed consent as a derivation of the right to health and implicitly recognized, from an ageing perspective, a manifestation of structural abuse towards older people and their supportive environments. The Court has also established that, at the very least, health care providers should offer the following information: (i) an evaluation and diagnosis; (ii) the purpose, method, probable duration and expected benefits and risks of proposed treatment; (iii) the possible adverse effects of proposed treatment; (iv) treatment alternatives, including those that are less invasive, together with the possible pain or discomfort, risks, benefits and secondary effects of the alternative treatments proposed; (v) the consequences of proposed treatment; and (vi) what may occur before, during and after the

³⁹ *Poblete Vilches et al. v Chile, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 349 (Mar. 8, 2018)*, www.corteidh.or.cr/docs/casos/articulos/seriec_349_ing.pdf.

treatment.⁴⁰ The ruling is unique in the Inter-American Human Rights System, as recognized by the court itself.⁴¹

THE IMPACT OF THE INTER-AMERICAN CONVENTION ON THE PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS

Of the 11 countries that have ratified the Convention (Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Perú, Colombia, México, Suriname and Uruguay),⁴² 10 have created new legislation related to older people, or updated existing law, namely:

Argentina: Argentina ratified the Inter-American Convention on the Protection of the Human Rights of Older Persons in 2017, which is now the main legal framework for older people's human rights in Argentina. This is augmented by the 2016 Ley No 5.429 sobre Prevención y protección Integral contra el abuso y maltrato a los adultos mayores de la República de la Argentina (Law for the Prevention and Comprehensive Protection against Abuse and Mistreatment of Older People) (Law No. 5420 (CABA)).⁴³ Article 9 of CABA states:

The measures adopted to protect older people who are victims of abuse or maltreatment will be oriented to the search for a comprehensive resolution of the problem of older people, trying to offer a variety of devices that bring them closer to the possibility of improving their quality of life.

Bolivia: The Inter-American Convention on the Protection of the Human Rights of Older Persons was ratified by Bolivia in 2016. Additionally, the 2013 Ley General No 369 de las personas Adultas Mayores de la República de Bolivia (General Law Number 469 on Older Persons of the Republic of Bolivia) regulates the 'rights, guarantees and duties of older people, as well as the institutional framework for their protection'.⁴⁴ This includes the protection of older people from violence and abuse. Since the ratification of the Convention, Bolivia has reinforced, through the Ministry of Justice and the Intersectoral Coordination Council for

⁴⁰ *I.V. v Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 329, p. 240 (Nov. 20, 2016); Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. (Interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights), Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24, p. 67 (Nov. 24, 2017) (discussing state obligations in relation to change of name, gender identity and rights deriving from a relationship between same-sex couples).

⁴¹ Angela Arenas Massa et al., *Sanctioning Chile's Public Health Care System for Not Providing Basic Services to Older People: The Inter-American Court's Poblete Vilches Ruling*, 23 HEALTH & HUM. RTS. J. 251 (2021).

⁴² Signatories and Ratifications, Inter-American Convention on Protecting the Human Rights of Older Persons, ORG. AM. STATES, www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp.

⁴³ Ley No. 5.429 sobre Prevención y protección Integral contra el abuso y maltrato a los adultos mayores de la República de la Argentina, 8 de enero de 2016.

⁴⁴ Ley General No. 369 de las personas Adultas Mayores de la República de Bolivia, de 1 mayo de 2013.

a dignified old age, preferential treatment in terms of pensions, health and access to justice, security, education, transportation and connectivity. According to Article 7 of the Law, the right to preferential treatment in access to services follows the criteria of efficient use of attention times; institutional response capacity; training and sensitization of personnel; personalized and specialized attention; treatment with quality and warmth; eradication of all forms of abuse; use of first language.

Costa Rica: The Inter-American Convention on the Protection of the Human Rights of Older Persons was ratified by Costa Rica in 2016. This was preceded by *Ley Integral para la Persona Adulta Mayor No 7.935* (Comprehensive Law for Older People, 1999, updated in 2013), which addresses health, education, pension, housing, social participation, access to justice, access to banking, family rights and socio-legal orientation, among others.⁴⁵

Perú: The Inter-American Convention on the Protection of the Human Rights of Older Persons was ratified by Peru in 2016. That same year, *Ley de la Persona Adulta Mayor* (Law of Older Persons), República de Perú No 30.490, *Ley de la Persona Adulta Mayor*, repealed its previous law relating to older people (Law No 28803),⁴⁶ aligning its new statute with the Convention. The replacement statute's purpose was to establish a general regulatory framework that guarantees the rights of older people.

Uruguay: Uruguay was the first country to ratify the Inter-American Convention on the Protection of the Human Rights of Older Persons in 2016. That same year, it replaced its previous Law for the Comprehensive Promotion of Older People Number 17.796 of 2004,⁴⁷ which was quite precarious (only six articles). It was replaced in December 2016 by the *Código del Adulto Mayor de la XLVIII Magistratura de la República Oriental del Uruguay* (Code of Older People of Uruguay).⁴⁸ The cause of this legal evolution was the signing of the Inter-American Convention by this country and the fulfilment of the international mandate that it contains. It considers older people to be those who have reached 65 years.

Ecuador: Ecuador ratified the Convention in 2019. Also in 2019, it passed the Organic Law of Older People,⁴⁹ the purpose of which is 'to promote, regulate and guarantee [...] the specific rights of the older people, within the framework of the principle of priority and specialized attention [...] with a focus on gender, human, generational and intercultural mobility' (Article 1).⁵⁰

El Salvador: El Salvador ratified the Convention in 2018. Additionally, the Legislative Assembly passed Decree Number 717,⁵¹ on Comprehensive Care for Older People in the Republic of El Salvador, the purpose of which is 'to guarantee and ensure comprehensive

⁴⁵ *Ley Integral para la Persona Adulta Mayor No. 7.935*, República de Costa Rica, de 28 noviembre de 2013.

⁴⁶ *Ley de la Persona Adulta Mayor*, República de Perú N°30.490, de 21 julio de 2016.

⁴⁷ Law No. 17796, on the Comprehensive Promotion of Older People, Ministry of Public Health, Uruguay, August 19, 2004.

⁴⁸ *Código del Adulto Mayor de la XLVIII Magistratura de la República Oriental del Uruguay* (Code of Older People of Uruguay) (2016).

⁴⁹ *Ley Orgánica de las Personas Adultas Mayores de Ecuador* (S/No), 29 de abril de 2019.

⁵⁰ *Id.*

⁵¹ Decree No. 717, art. I, on Comprehensive Care for the Older People in the Republic of El Salvador, Jan, 27, 2021.

care for the protection of Older People and contribute to family strengthening and integration' (Article 1).⁵²

Chile: Chile implemented the Convention in 2017. In the case of Chile, Bulletin Number 13.822–07 was presented by the Presidency in October 2020, and is currently in its Second Constitutional Reading in the Congress. This has been consolidated with Bulletins Number 12.451–13 and Number 12.452–13, both regarding older persons' human rights, and whose aim is to promote positive ageing, deliver comprehensive care for older people and strengthen the institutional framework for older people. The project has generated agreements on matters of care, participation and access to justice, with political will to move forward. For the moment, Law Number 21.375 has entered into force, which 'establishes palliative care and the rights of people suffering from serious terminal illnesses'.⁵³ The law guarantees universal access to care for all people suffering from serious or terminal illnesses, contributing to their well-being and death process. Additionally, Decree 22/2019 Health Ministry approves explicit guarantees covering the costs of mild cognitive decline, especially in cases of Alzheimer's.⁵⁴ However, the costs of other phases of dementia (moderate and severe) and other dementias are not guaranteed. Furthermore, Law Number 21.168 'creates the right to preferential care for older people and people with disabilities'⁵⁵ and Law Number 21.380 'recognizes the right to preferential care for health care workers'.⁵⁶

Colombia: Colombia passed Law Number 1.850 (2017),⁵⁷ through which measures to protect older people are established, laws modified, domestic abuse by abandonment penalized and new provisions issued. The different types of abuse of older people are regulated, such as physical violence and restriction of physical, mental or patrimonial freedom or abandonment. These situations could occur within the family, in a care setting or in the community (Articles 3, 4 and 5). Social Protection Centres have also been created to receive older people who are victims of violence and there is day centre provision for people with mild dependency.

México: México recently ratified the Convention (March 2023).⁵⁸ It previously passed the Law on the Rights of Older People (updated in 2016), which guides national public policy and creates the National Institute for Older People (Article 1). It establishes duties for the State, society and the family. The family has a maintenance obligation, a duty to integrate the older person into the family and a duty to avoid interfamily violence.

⁵² *Id.*

⁵³ Law No. 21.375, Marzo 21, 2022, DIARIO OFICIAL [D.O.] (Chile) (enshrining palliative care and the rights of people suffering from terminal or serious illnesses).

⁵⁴ Decree No. 22, Ministry of Health, Septiembre 7, 2019, DIARIO OFICIAL [D.O.] (Chile).

⁵⁵ Law No. 21.168, Julio 27, 2019, DIARIO OFICIAL [D.O.] (Chile) (modifying Law No. 20.584 in order to create the right to preferential care for older people and people with disabilities).

⁵⁶ Law No. 21.380, Octubre 21, 2021, DIARIO OFICIAL [D.O.] (Chile) (recognising caregivers' right to preferential care in the field of health).

⁵⁷ Law No. 1.850, Julio 19, 2017, DARIO OFICIAL [D.O.] (Colom) (establishing protection measures for older people in Columbia, modifying laws such that domestic abuse due to abandonment is penalized and new provisions are added).

⁵⁸ Brazil signed the Treaty on June 15, 2015, but has not yet ratified the instrument: www.oas.org/es/sla/ddi/tratados_multilaterales_interamericanos_A-70_derechos_humanos_personas_mayores_firmas.asp.

Suriname: Suriname has the General Pensions Law 2014 (No. 113 of 2014), and the subjects are old age, invalidity and survivors' benefit (2014–09–09).⁵⁹ This was the last country to ratify the Inter-American Convention (May 2023) and this action is hoped to bring about an upgrade of the legislation on older persons.

It is clear that bringing into force the Inter-American Convention on the Protection of the Human Rights of Older Persons has caused a positive impact in the countries that have ratified the instrument. It has also been influential more broadly, since it has motivated or renewed dialogue in local parliaments, making specific problems visible and also offering solutions. At the same time, countries have marked their national identities, promoted by the Inter-American System that inspires the Convention (as already mentioned, regarding the right to life throughout the life course and respect for indigenous peoples). This has primarily been via the underpinning of core cultural values in two main ways: first of all, respect for the right to life throughout the entire course of life, which is represented in the emphasis that has been given to palliative care and euthanasia being considered a crime; second, the respect for older people that exists among native peoples has served as a model for the inter-American system, validating and facilitating the transmission of wisdom within communities. Indigenous people also promote the extended family and intergenerational ties, which has generated specific laws and policies for preferential attention in public services, subsidies for caregivers (who on the continent are mostly female relatives) and labour regulation for older people so that they remain active and incorporated into the community.

A STEP TOWARDS A UN CONVENTION ON THE RIGHTS OF OLDER PEOPLE?

The Inter-American Convention on the Protection of the Human Rights of Older Persons has shown that this 'special' regulation has contributed in a tangible way to favouring the exercise of rights, fulfilling both a practical and symbolic function. It makes explicit the issues which particularly concern older people and a clear commitment to social inclusion. It offers a solution to the exclusion of older people from important national and international strategies. For example, the UN's review of the Sustainable Development Goals and the 2030 Agenda⁶⁰ shows that even though disability, gender, childhood and adolescence groups are incorporated into goals and indicators, references to old age are few. For the United Nations Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,⁶¹ and for organizations such as HelpAge International⁶² this reflects the lack of a specific legal instrument protecting the universal human rights of older people.

⁵⁹ *Database of National Labour, Social Security and Related Human Rights Legislation*, INT'L LAB. ORG., www.ilo.org/dyn/natlex/natlex4.detail?p_isn=96936&p_lang=en.

⁶⁰ *Transforming Our World: The 2030 Agenda for Sustainable Development*, UNITED NATIONS (2015), <https://sdgs.un.org/2030agenda>.

⁶¹ See Claudia Mahler, Independent Expert on the Enjoyment of all Human Rights by Older People, Report on Ageism and Age Discrimination, UN Doc. A/HRC/48/53 (Aug. 5, 2021) [hereinafter *Ageism and Age Discrimination*].

⁶² See *Ageing, Older Persons and the 2030 Agenda for Sustainable Development*, HELPAGE INT'L. (2017), www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2017/07/UNDP_AARP_HelpAge_International_AgeingOlderpersons-and-2030-Agenda-2.pdf.

Another point of interest is that the treaty has made discrimination against older people more visible in the countries that have ratified the convention, facilitating resources and activating actions within national governments. Article 2 of the Convention defines age discrimination as

any distinction, exclusion or restriction based on age that has the purpose or effect of annulling or restricting the equal recognition, enjoyment or exercise conditions of human rights and fundamental freedoms in the political, economic, social, cultural sphere or in any other sphere of public and private life.⁶³

Age discrimination is prohibited in Article 5 and in the Article 32(b) awareness-raising provisions. Article 5 requires States to ‘promote a positive attitude towards old age and a dignified, respectful and considerate treatment towards the older person [...] [and] avoid stereotyped language and images about old age’.⁶⁴ For Mahler, age discrimination constitutes an important barrier in the implementation of effective policies relating to older people.⁶⁵ Unfortunately, age discrimination is widely prevalent, highly pervasive and insidious because it goes largely unrecognized and unquestioned. In itself, discrimination represents a directly negative behaviour, which addresses nuances that range from invisibilization to violence.⁶⁶ Among older people, age discrimination is associated with poor physical and mental health, increased social isolation and loneliness and premature death, increased financial insecurity and decreased quality of life.⁶⁷ In 2015, the United Nations Human Rights Council, through its previous Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, has observed that ‘discrimination based on age causes a lack of self-esteem and helplessness to older people and erodes their sense of autonomy’.⁶⁸

Furthermore, the Convention has accelerated and concentrated the promotion of intergenerational solidarity, creating a framework of positive action for public policies in the different governments, which could be extended to other continents if a Universal Convention on the Human Rights of Older Persons was to be created. This would make it possible to generate specific approaches towards addressing the diverse needs and concerns of older age, expanding the offer of services to respond to the requirements of ageing populations, taking a participatory approach. Such a convention could make explicit, as the Inter-American Convention does, that States ‘will promote the participation of older people in intergenerational activities

⁶³ Inter-American Convention on Protecting the Human Rights of Older Persons art. 2, June 15, 2015, art. 2, 55 ILM 985.

⁶⁴ Inter-American Convention on Protecting the Human Rights of Older Persons, ch. IV, art. 5, ch. V, art. 32(b), June 15, 2015, 55 ILM 985, www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp.

⁶⁵ Mahler, Ageism and Age Discrimination, *supra* note 61.

⁶⁶ John Dovidio et al., *Implicit Attitudes and Discrimination Against People with Physical Disabilities*, DISABILITY AND AGING DISCRIMINATION (Richard L. Weiner & Steven L. Willborn, eds, 2011).

⁶⁷ Rosa Kornfeld-Matte, Independent Expert on the Enjoyment of All Human Rights by Older Persons, Report on Autonomy and Care, 21–4, UN Doc. A/HRC/30/43 (Aug. 13, 2015).

⁶⁸ *Id.*

to strengthen solidarity and mutual support as key elements of social development' (Article 8).⁶⁹

A universal convention could also address the economic plight of many older people. In terms of pensions, today less than 20 per cent of older people worldwide receive an old-age pension as a permanent income.⁷⁰ This is despite the range of international human rights laws which address social protection, of which the Universal Declaration of Human Rights (1948) stands out: its Article 25 prescribes the right to insurance in case of old age.⁷¹ In the same sense, Article 9 of the International Covenant on Social, Economic and Cultural Rights (1966) recognizes 'the right of every person to social security, including social security'.⁷² The International Labour Organization recognizes old age benefits in Convention 102 on Social Security (minimum standard) (1952),⁷³ in part V, Articles 25–30, as does Convention 128 (1967) part III, Articles 14–19.⁷⁴ However, these have so far failed to ensure universal pensions for older people globally. Claudia Mahler⁷⁵ has highlighted the need to provide a socioeconomic and humanitarian response to older people, and that it is essential to ensure income security for older people, especially women, through universal pension coverage and compensation measures.⁷⁶

At the Latin American level, there is the Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights (1988), which in its Article 17 expressly refers to the 'protection of older people' in terms of a 'special protection'.⁷⁷ The Inter-American Convention on the Protection of the Human Rights of Older Persons in Article 17 requires States to 'progressively promote, within available resources, the provision of income to ensure a dignified life for older persons through social security systems and other flexible social protection mechanisms'.⁷⁸ A universal convention could also contain such a requirement and address access to basic services, especially health, and eliminate arbitrary discrimination against women, in order – among other things – to overcome the feminization of poverty in old age.⁷⁹

⁶⁹ Inter-American Convention on Protecting the Human Rights of Older Persons ch. IV, art. 8, June 15, 2015, 55 ILM 985.

⁷⁰ UN Policy Brief: The Impact of COVID-19 on Older People 3 (May 2020).

⁷¹ GA Res. 217 III (A), Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

⁷² GA Res. 2200A (XXI), International Covenant on Social, Economic and Cultural Rights, art. 9 (Dec. 16, 1966).

⁷³ International Labour Organization, Convention Concerning Minimum Standards of Social Security, June 28, 1952, 35 ILC No. 102.

⁷⁴ International Labour Organization, Invalidity, Old-Age and Survivor Benefits Convention, June 7, 1967, 51 ILC No. 128.

⁷⁵ Claudia Mahler, Independent Expert on the Enjoyment of All Human Rights by Older Persons, Impact of the Coronavirus Disease (COVID-19) on the Enjoyment of all Human Rights by Older Persons, UN Doc. A/75/205, 20, 25 (July 21, 2020).

⁷⁶ *Id.*

⁷⁷ Org. Am. States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 16, 1999, art. 17.

⁷⁸ Inter-American Convention on Protecting the Human Rights of Older Persons ch. IV, art. 17, June 15, 2015, 55 ILM 985.

⁷⁹ JULIO BANGO & PATRICIA COSSANI, UN WOMEN & ECON. COMM'N FOR LATIN AMERICA & THE CARIBBEAN (ECLAC), TOWARDS THE CONSTRUCTION OF A COMPREHENSIVE CARE SYSTEMS IN LATIN

Another reason for projecting the Inter-American Convention into a universal convention is that the regional experience has generated dialogues with current laws, improving the articulation between different sectors that provide services and optimizing collaborative working strategies. This exercise has provoked the generation of new ideas and the development of innovations. For example, progress has been made in mandatory banking in Argentina, linked to education programmes for families to increase awareness of the inherent obligations in the management of finances and technology information for older people. In Chile, digital health appears as a response to managing and supporting people with dementia.

It should not be forgotten that the effect of a treaty is not limited to its ratification and direct application in the countries that sign it, it also addresses the modifications that it motivates in public policies and in the indicators that measure progress. This issue is addressed by the Inter-American Convention and has forced States to review their own indicators. Rosa Kornfeld-Matte has previously argued that is necessary to adopt a systematic approach to data collection and analysis at all levels, including in relation to emergency response systems.⁸⁰ This is addressed in Article 29 of the Inter-American Convention on the Protection of the Human Rights of Older Persons. This would be, for example, the first step to ensuring that in emergency planning and response, there is reliable evidence to support plans which impact older people and monitor their operational effectiveness. An example of this is the exclusion of data relating to older people in statistical models generated to guide strategic responses to the pandemic, which have, in particular, not taken into account older people living in long-term care facilities.⁸¹ Such statistical data must include a gendered approach. It is often forgotten that, in general, women live longer and in worse conditions, they are more likely to age in poorer health, and it is easier for them to fall into poverty.⁸²

If an agreement is not ratified, it loses validity and effectiveness. Currently, the Inter-American Convention on the Protection of the Human Rights of Older Persons has only been ratified by ten countries. The countries that have not signed the instrument are Antigua and Bermuda; Barbados; Belize; Canada; Cuba; Dominican Republic; Grenada; Guatemala; Guyana; Haiti; Honduras; Jamaica; Nicaragua; Panama; Paraguay; Dominican Republic; Saint Kitts and Nevis; St Vincent and the Grenadines; St Lucia; Suriname; Trinidad and Tobago; USA; and Venezuela.⁸³ This situation is a disadvantage for the projection of a universal convention, if the countries that need it the most do not sign it.

AMERICA AND THE CARIBBEAN: ELEMENTS FOR ITS IMPLEMENTATION, UN Doc. LC/TS.2022/26 (Nov. 2021).

⁸⁰ Rosa Kornfeld-Matte, Independent Expert on the Enjoyment of All Human Rights by Older Persons, Report on the Human Rights Protection of Older Persons in Emergency Situations. UN Doc. A/HRC/42/43 (July 4, 2019).

⁸¹ Karl Pillemer et al., *The Importance of Long-term Care Populations in Models of COVID-19*, 324 JAMA 25 (June 5, 2020).

⁸² JULIO BANGO & PATRICIA COSSANI, UN WOMEN & ECON. COMM'N FOR LATIN AMERICA & THE CARIBBEAN (ECLAC), TOWARDS THE CONSTRUCTION OF A COMPREHENSIVE CARE SYSTEMS IN LATIN AMERICA AND THE CARIBBEAN: ELEMENTS FOR ITS IMPLEMENTATION, UN Doc. LC/TS.2022/26 (Nov. 2021).

⁸³ Signatories and Ratifications, Inter-American Convention on Protecting the Human Rights Of Older Persons, ORG. AM. STATES, www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp.

CONCLUSION

The COVID-19 pandemic has highlighted the importance of a binding legal instrument which protects the human rights of older persons. A new universal UN convention on the rights of older people would help create cultural change and promote more positive images of old age, which need to permeate the state and civil society. A recent study led by HelpAge International highlighted the unequal treatment faced by older people in multiple countries, and how this is shaped by prejudice and discrimination towards them, which in turn detrimentally affects their resilience and ability to adapt successfully to changing environments.⁸⁴ Also according to HelpAge International, older people think – in relation to exercising their right to freedom of expression and opinion (Article 14 Inter-American Convention on the Protection of the Human Rights of Older Persons) – that the legal recognition of their rights would be a positive measure to improve the actions or behaviours of other generations towards older people. HelpAge International have also called for the Inter-American Convention on the Protection of the Human Rights of Older Persons to be turned into a global convention.⁸⁵

The Latin American region has given considerable time and normative effort to the objective of promoting the rights of older people through a dedicated convention. The pandemic has highlighted how international leaders must acknowledge the structural discrimination that affects older people and informs the present lack of a specific UN convention. There is growing political will for such a convention.³⁴ The Inter-American Convention offers a model for how a universal convention might be formulated.

⁸⁴ HELPAGE INT'L, UNEQUAL TREATMENT: WHAT OLDER PEOPLE SAY ABOUT THEIR RIGHTS DURING THE COVID PANDEMIC, 19, 2, 5, 8, 16 (2021), www.helpage.org/what-we-do/rights-of-older-people/unequal-treatment-report/.

⁸⁵ Andrea Dotta, *We Have an Inter-American Convention Protecting Older People's Rights, Let's Campaign to Make it Global*, HELPAGE INT'L, www.helpage.org/blogs/andrea-dotta-31478/we-have-an-interamerican-convention-protecting-older-peoples-rights-lets-campaign-to-make-it-global-1082/.