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„A Life Cycle of Human Rights of Older Persons“

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Laura Alberti

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For the purpose of brevity and comprehensibility, pronouns and adjectives in the masculine gender apply equally to men and women, unless otherwise specified.

Any quotes from foreign works will be given in the author’s own translation.

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List of acronyms and abbreviations

AU	African Union
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Committee on the Rights of the Child
ESC	European Social Charter
EU	European Union
FRA	European Union Agency for Fundamental Rights
GA	General Assembly
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
ICEDAW	International Convention on the Elimination of all Forms of Discrimination Against Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Rights of All Migrant Workers and their Families
ICRC	International Convention on the Rights of the Child
ICRPD	International Convention on the Rights of Persons with Disabilities
ILO	International Labour Organization
MIPAA	Madrid International Plan of Action on Ageing
NGO	Non-Governmental Organisation
OAS	Organization of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
OEWGA	Open Ended Working Group on Ageing
OHCHR	Office of the High Commissioner for Refugees
UN	United Nations
VIPAA	Vienna International Plan of Action on Ageing
WHO	World Health Organisation

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1. Introduction

Today's world is facing a growing ageing population, a demographic development also dubbed a "quiet revolution".[1] While the total number of older persons should not be a determinant for rating the sense of a protective legal framework, current numbers and projections (see chapter 2) emphasise the increasing need for setting clear standards for ensuring the human rights and fundamental freedoms of a growing social group.[2] And although Human Rights are set down to be 'universal, indivisible and interdependent and interrelated'[3] there seems to be a regrettable tendency for human rights to become less accessible with the progressing of the life course.[4] While this is not directly due to ageing itself, it can be attributed to connected bias and the misguided perception of inevitable function loss in old(er) age. This can be further aggravated through cumulative discrimination encountered due to gender, disability etc. (see chapter 5.3.).

Although higher life expectancy also has its positive sides for the individual such as opportunities for work and leisure, financial support and assistance to the family and participation through volunteering etc.[5], this demographic development will also have serious implications not only for the individuals and their families but for society as a whole. A 2016 report from the United Kingdom identified some key areas where the impact would be most visible namely employment, education, housing arrangements, family, health and care systems and connectivity.[6] These implications are seen as a result of the demographic developments and can accordingly be applied to comparable nations and societies experiencing a similar change. This development will require new and/or adapted policies to react to, and to meet intensified financial, infrastructural and service needs. But looking at the

[1] Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 6: The economic, social and cultural rights of older persons,* 8 December 1995, para.20-42.
[2] Jennifer Dabbs Sciubba, 'Explaining campaign timing and support for a UN Convention on the Rights of Older People', *The International Journal of Human Rights,* vol.18, no.4-5, 2014, p.463.
[3] United Nations (UN) World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993, para.5.
[4] Open Ended Working Group on Ageing (OEWGA), *Report of the Open-ended Working Group on Ageing on its eighth working session*, 2017, p.8.
[5] Ibid., p.67.
[6] United Kingdom Government Office of Science, *Future of an Ageing Population*, 2016, p.24.

above-mentioned facts alone might be misleading so as to foster the perception of older persons as a homogeneous group of individuals with similar conditions and needs, resulting in negative bias and ageist attitudes (see chapter 5.2.). Old(er) age, just as the rest of the life course, must be considered as a highly diverse continuum, which should also be reflected in studies and policies relevant to older persons. As varied as the 'group' itself, is the terminology used in official international and regional documents, which is not consistent and has been subject to change over the years (see chapter 2). For the purpose of this Master thesis I limit myself to using the terms 'older persons' and 'old(er) age'.

While there are already some national and regional standards concerning the rights of older persons such as the *Inter-American Convention on protecting the Rights of Older Persons*[7] and the African Union *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa*[8], a comprehensive conceptual framework for policy responses to address implications for ageing societies on the global level is currently still missing (see chapter 4.1.).

It is therefore time for policies and especially international and regional standards to be adapted and expanded so as to reflect the needs of a growing and important part of the population. The need for such policies has for instance been voiced by the European Union for over a decade and there is concern that the "window of opportunity for policy reform will be closing".[9] At an international level, in 2010, the United Nations has started addressing the topic in a more targeted manner by setting up an Open-ended Working Group on Ageing (OEWGA)[10] which is tasked with assessing the current situation, individuating key issues and working on solutions. Among others, they were mandated to prepare a proposal for a possible International Convention on the Rights of Older Persons (see more in chapter 4.2.).[11]

[7] Inter-American Convention on protecting the Rights of Older Persons (adopted 15 June 2015, entered into force 11 January 2017).
[8] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (adopted 31 January 2016).
[9] Nancy Morrow-Howell and Ada C. Mui (ed.), *Productive Engagement in Later Life: A Global Perspective*, New York, Routledge, 2012, p.ix.
[10] UN General Assembly (GA) Res 65/182, 21 December 2010, para.28.
[11] UN GA Res 67/139, 20 December 2012, para.1.

Looking at the connection between a possible new convention and the development and content of the *International Convention on the Rights of the Child*[12] (ICRC) has been done only sporadically.[13] The discussions by various actors have often referenced to the International Bill of Human Rights, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*[14], the *International Covenant on Civil and Political Rights (ICCPR)*.[15] The focus has also been lying on possible overlays with the *International Convention on the Elimination of all forms of Discrimination against Women (ICEDAW)*[16] but most importantly the *International Convention on the Rights of Persons with Disabilities (ICRPD)*[17] seeing as these international standards all relate to separate 'groups' as well.[18] Especially the latter one was used to argue against a specific separate convention relating to old(er) age saying that older persons would already be covered by the existing international human rights framework.[19] But focusing only on the impairment related aspect of age by referencing to the ICRPD disregards significant aspects of ageing which may be unrelated to impairment or barriers encountered in old(er) age. While older persons may increasingly be faced with function loss, this in not to be understood as automatically disabling them or precluding the enjoyment of health and well-being being. While there is certainly some overlap with the approach of the ICRPD, there is still room for addressing other perspectives beyond the need to address function loss related barriers.

[12] International Convention on the Rights of the Child (ICRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

[13] Eva Brems, Ellen Desmet and Wouter Vandenhole, *Children's Rights Law in the Global Human Rights Landscape: Isolation, inspiration, integration?,* London, Routledge, 2017.

[14] International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3.

[15] International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

[16] International Convention on the Elimination of all Forms of Discrimination against Women (ICEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 1.

[17] International Convention on the Rights of Persons with Disabilities (ICRPD) (adopted on 13 December 2006, entered in to force 3 May 2008) 2515 UNTS 3.

[18] Annie Herro, 'The human rights of older persons: the politics and substance of the UN Open-Ended Working Group on Ageing', *Australian Journal of Human Rights*, vol.23, no.1, 2017, p.102.

[19] Léon Poffé, 'Towards a New United Nations Human Rights Convention for Older Persons?', *Human Rights Law Review*, vol.15, nr.3, 2015, pp.591–601, Available from OUP (accessed 31 March 2018).

Looking also more at the success and record ratification[20] of the ICRC of 1990 for example could therefore also offer valuable learnings. But I believe that there is more to be drawn from the ICRC in this case than its achievements in development and implementation, but rather that there could also be insights that may be learned from analysing the content.

Childhood and old(er) age are more strongly interconnected than might be expected at first. A study by the Organisation for Economic Co-operation and Development (OECD) has found distinct correlations between a person's socio-economic status in their childhood and their future circumstances concerning for example health, education, income and life expectancy. Or more incisively: "ageing unequally starts early and builds from childhood to old age".[21] Trends seem to suggest that adolescents and young adults are progressively faced with more inequality[22] and a higher risk of poverty[23], which necessitates to start looking at children's rights first to be able to discern what needs might arise in old(er) age. Gaps therein that might not be relevant when looking at young people alone could lead to disadvantages in later life and might have to be addressed in standards concerning older persons' rights.

My research question is therefore the following: **Which conclusions can be drawn from the International Convention on the Rights of the Child that could be useful in the development of an International Convention on the Rights of Older Persons?**

As already mentioned, the discussion on the development of a comprehensive framework for the rights of older persons at the OEWGA has been going on for

[20] Arlene Bowers Andrews and Natalie Hevener Kaufman, *Implementing the U.N. Convention on the Rights of the Child : A Standard of Living Adequate for Development*, Westport, Praeger, 1999, p.xi.; Israel Doron and Itai Apter, 'The Debate Around the Need for an International Convention on the Rights of Older Persons', *The Gerontologist*, vol.50, no.5, 2010, p.588.

[21] Organisation for Economic Co-operation and Development (OECD), *Preventing Ageing Unequally*, 2017, Available from https://read.oecd-ilibrary.org/employment/preventing-ageing-unequally_9789264279087-en#page1 (accessed 29 June 2018), p.29.

[22] OECD, p.27.

[23] OECD, p.29.

several years[24] without yet resulting in the establishment of a corresponding international convention. While efforts are already being made to prepare such a draft convention, the discourse mainly refers to the ICRPD.[25] The Convention gives a clear statement that human rights do not depend on health or the absence of impairment[26] but due to their universality and inherent nature apply to everyone indiscriminately (see also chapter 4.1.). It further differentiates between impairment and disability, the second being the detrimental effect caused by barriers which can have a disabling effect on the individual.[27] One argument made against a separate Convention for Older Persons is therefore specifically that older persons' rights would be covered by the general conventions and the ICRPD. Although many aspects relating to ageing are covered by those standards I intend to show in the course of my thesis that there are age related aspects, which may benefit from a different or additional approach.

Examining in that process also if and how the ICRC addresses age specific issues seems only reasonable. In the spirit of intergenerationality, the impact of life-long influences and the universality of human rights there is a need to bridge the gap between these two important segments of life. These arguments will be discussed in my thesis so as to determine how they are and could be included in the discourse. I intend to find out which areas are comparable and if and what insights could help in the development of a Convention on the Rights of Older Persons. It will furthermore also be important to trace what difficulties might arise in relation to the establishment a Convention on the Rights of Older Persons and how it will be beneficial for securing full enjoyment of human rights in old(er) age.

Chapter 2 provides a theoretical reflection and discussion of who 'older persons' are to lay the groundwork for establishing the needs which a convention would have to address. This is only a rudimentary delineation as a clear definition is not possible due to strong, culturally specific variations in perceptions of who 'older

[24] UN GA Res 65/182, 21 December 2010, para.28; OEWGA, *Report of the Open-ended Working Group on Ageing on its second working session*, 2011, p.7; OEWGA, *Report of the Open-ended Working Group on Ageing on its fourth working session*, 2013, p.19.

[25] OEWGA, Report of the Open-ended Working Group on Ageing, Seventh working session, 2016, p.8f.

[26] Theresia Degener, 'Disability in a Human Rights Context', *laws*, 2016, Available from MDPI (accessed 19 July 2018), p.1.

[27] Ibid.

persons' are. Considering that for example the ICRPD doesn't provide a definition of the 'group' it protects, it might not even be included in a future convention relating to old(er) age. In chapter 3 I then established the relevance and necessity for creating a Convention on the Rights of Older Persons by looking also at relevant and comparable arguments that were made for other international norms. Chapter 4 consequently serves to give an overview over existing standards in relation to human rights of older persons and considering the context in which the current discussions on this topic are set especially in relation to the ICRPD. For this part I followed an inductive research and qualitative multimethod approach based on an analysis of arguments and documents relating to the recent discussion on a convention on the rights of older persons. A document analysis after Bowen[28] of regional and international norms and (policy) documents relating to the rights of older persons as well as all previous OEWGA session reports has helped me determine the social and ideological setting into which a possible convention would be incorporated and which benefits and challenges this will bring. In the course of this step I also determined which documents would be most useful for me to focus on for the rest of my analysis.

The **core of my thesis**, chapter 5, describes which areas could have special relevance for old(er) age and how these are addressed in the Convention on the Rights of the Child, albeit in a different context. For that I employed methods from grounded theory[29] and qualitative content analysis[30] to establish areas that in the my selection of relevant documents were dealt with most frequently or delineated as most significant. Based on the findings of this codification I applied the resulting categories to the preamble and relevant substantive articles of the ICRC to assess their comparability to old(er) age and define any difficulties that might arise in their specific context. I omitted an analysis of the second part containing only its

[28] Glenn A. Bowen, 'Document Analysis as a qualitative Research Method', *Qualitative Research Journal*, vol.9, nr.2, 2009, p.27-40.

[29] Andreas Boehm, 'Grounded Theory - wie aus Texten Modelle und Theorien gemacht werden' (Grounded theory – how models and theories are formed from texts), in A. Boehm, A. Mengel, and T. Muhr (ed.), *Texte verstehen: Konzepte, Methoden, Werkzeuge (understanding texts: concepts, methods and tools)*, Konstanz, Univ.-Verlag Konstanz, 1994, pp.121-140.

[30] Philipp Mayring, *Einführung in die qualitative Sozialforschung*, Weinheim, Psychologie Verlags Union, 1999.

procedural articles. While I did find some analogies, I also came across several gaps, which are discussed in the corresponding sub-chapters of chapter 5.

Arguing from a human rights perspective underlines the universality, indivisibility and interconnectedness of such rights which are valid from birth to death and therefore also the importance of inclusion and protection of older persons. It shifts the focus away from a deficit-centred, patronising approach to older people's rights to addressing their needs at eye level.[31] But a human rights-based approach (HRBA) doesn't only emphasize the importance of respecting a person's rights and freedoms it also makes them legally enforceable. The goal is to provide a framework with which rights-holders, in our case older persons, can claim their rights from duty-bearers namely the state that implements regulations and makes sure they are accessible and enforceable. It further builds upon an established, well-connected framework and can fall back on a well-recognised discourse and supportive research. By applying a HRBA it becomes possible to push for a stronger protective framework through broadly accepted rights like the right to health and others. It also incorporates other important principles like non-discrimination, participation and accountability, which are all crucial for full implementation and adherence.[32] As this approach and the moralistic undertone it implies, can easily lead to unrealistically high standards, which could cause some more cautious parties to distance themselves from any such efforts, it will, when it comes to preparing and implementing a convention, be important to encourage more comprehensive involvement of different stakeholders, particularly also those who might not be fully convinced of the endeavour, and maintain an open discussion in order to take into consideration as many voices as possible.

[31] Fundamental Rights Agency of the European Union (FRA), *Fundamental Rights Report 2018*, Luxembourg: Publications Office of the European Union, 2018, p.9.

[32] B. Baer, A. Bhushan, H.A. Taleb, et.al., 'The Right to Health of Older People', *Gerontologist*, vol.56, 2016, p.212-214.

2. Who are ‚older persons'?

The world's population is ageing not only in total numbers but also regarding the proportion of older persons in all parts of the world. Projections expect the total number of persons over the age of 60 to grow by over 50% until 2030 and the number of over 80-year olds to even triple within the same time span.[33] Recent World Health Organisation (WHO) statistics seem to confirm this tendency as well. While there are of course significant differences between regions, this general trend can be observed across the globe. These changes can be attributed to medical developments resulting in higher life expectancy and are above that reflecting lower mortality rates at younger age and lower fertility rates.[34] Consequently, the number of healthy life years a person is expected to live is increasing as well (see Figure 1). WHO forecasts tell us that by 2050 over 45 countries will have a percentage of population aged 60 years or older of over 30%.[35]

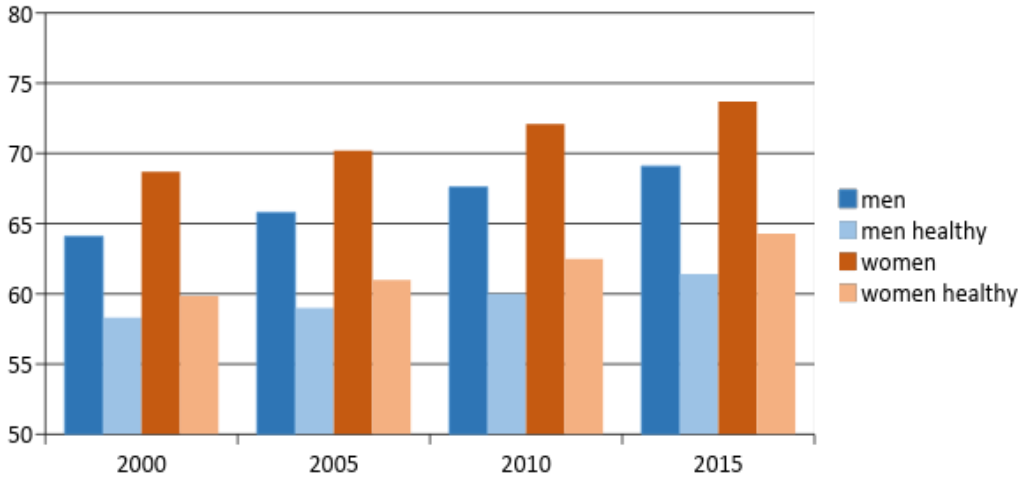

Figure 1: Global average of life expectancy and healthy life years, men and women, 2000-2015[36]

[33] UN, *World Population Ageing*, 2015, Available from http://www.un.org/en/development/desa/population/publications/pdf/ageing/WPA2015_Report.pdf (accessed 21 March 2018), p.9.

[34] World Health Organization (WHO), *World Report on Ageing and Health*, 2015, Available from http://apps.who.int/iris/bitstream/10665/186463/1/9789240694811_eng.pdf?ua=1 (Accessed 8 June 2018), p.3.

[35] Ibid., p.43f.

[36] WHO, *Life expectancy data by WHO region*, Global Health Observatory Data Repository, 2016, Available from http://apps.who.int/gho/data/view.main.SDG2016LEXREGv?lang=en (accessed

But looking at these facts alone might be misleading so as to foster the perception of older persons as a homogeneous group of individuals with similar conditions and needs, while actually the contrary is the case. The portion of the population aged above 65 years displays the widest range of ability and impairment as compared to other groups.[37] Conditions typically attributed to old(er) age are not as chronologically bound as has been believed for many years so while some might suffer from one or more ailments early on, others might not experience any serious health problems at all, given the right conditions.[38]

In its *Fundamental Rights Report 2018* the Fundamental Rights Agency (FRA) of the European Union (EU) lists the following four approaches to classifying age that I would like to adopt for my definition as well:

- chronological age, based on the date of birth;
- biological age, linked to physical changes;
- psychological age, referring to mental and personality changes during the life cycle;
- social age, which defines the change of an individual's roles and relationships as they age.[39]

Already considering the first category, the difficulties in defining when a person can be considered as 'old' become apparent. The **chronological** classification of 'old age' for example is subject to historical, geographical and cultural variations. The UN typically sets the threshold for old(er) age at 60 years[40] although many regional and national classification set the limit at 65 years as it conforms more

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21 March 2018); WHO, *Healthy Life Expectancy (HALE) data by WHO region*, Global Health observatory data repository, 2016, Available from http://apps.who.int/gho/data/view.main.HALEXREGv?lang=en (accessed 21 March 2018).

[37] Ibid., p.7.

[38] WHO, *Global Strategy an Action Plan on Ageing and Health*, Geneva, 2017, Available from http://www.who.int/ageing/WHO-GSAP-2017.pdf?ua=1 (accessed 13 June 2018), para.15.

[39] FRA, p.10.

[40] UN Department of Economic and Social Affairs, Population Division, *World Population Prospects: The 2017 Revision, Key Findings and Advance Tables*, 2017, Available from https://esa.un.org/unpd/wpp/Publications/Files/WPP2017_KeyFindings.pdf (accessed 8 June 2018), p.1.

closely to many countries' retirement ages.[41] The classification of old(er) age starting at 60 years old has consequently also been adopted in beyond the UN framework.[42] Sometimes another classification, from 80 years upwards, is introduced additionally[43], though so far not in the most relevant regional and international soft law documents and conventions. To address the heterogeneous character of older persons as a social group, it has been proposed to further graduate this division by introducing smaller subcategories[44] but this has until now not been used in supranational legislative practice either. The WHO has even proposed to avoid categorisation by chronological age altogether to counteract ageist tendencies.[45]

This shows, that problems with categorisation already start with the inconsistent use of language when referring to older persons.[46] The UN previously used 'the aged' or 'the ageing', 'the elderly', 'elderly people', 'the third age' and 'older people'[47] and later shifted to the predominant use of 'older people' or 'older persons' to refer to over 60-year old individuals.[48] The VIPAA for example designates "persons beyond a certain age", which probably refers to over 80 years old, as the 'old old'.[49] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and the Inter-American Convention on protecting the Rights of Older Persons exclusively use the designation they also bear in their title, as does the FRA.[50] However, consistency can be found when it comes to the use of the terms 'ageing' and 'old age' or 'older age'.

Biologically the state of ageing entails "gradual, lifelong accumulation of molecular and cellular damage that results in a progressive, generalized impairment in many body functions, an increased vulnerability to environmental challenges and

[41] CESCR, 1995 para.9.
[42] Inter-American Convention on protecting the Human Rights of Older Persons, art.2; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.1.
[43] CESCR, 1995, para.9.
[44] FRA, p.16.
[45] WHO, 2017, p.9.
[46] CESCR, 1995, para.9.
[47] VIPAA
[48] MIPAA; CESCR, 1995, para.9
[49] VIPAA, para.31(i).
[50] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa; Inter-American Convention on protecting the Rights of Older Persons; FRA, 2018.

a growing risk of disease and death"[51] as well as psychological implications. On the individual level these can occur at various stages and intensities but looking at the broader picture, it is still possible to discern general patterns.[52] The most affected functions are movement (including reduced muscle strength and bone density, arthritic pains, slower gait speed), sensory functions (vision, hearing), cognitive functions (Information processing etc), sexuality, immune functions and skin strength among others. The impairment of cognitive functions especially can occur very heterogeneously and is influenced by many different factors, including socio-economic status, lifestyle, presence of chronic disease and the use of medication.[53]

Another important element is the prevalence of multimorbidity among older persons. This usually means that a patient has at least two or more chronic conditions, although there is no clear universal definition yet. This can be problematic insofar, as these illnesses can have a worsening effect on each other or conflict in their treatments. In some cases, conditions usually not related to cognitive impairment can nevertheless cause such symptoms - for instance through an infection causing delirium.[54] It is therefore not only the individual conditions themselves that can cause problems, but rather the emerging of multiple such conditions at the same time. The WHO has analysed and compared a large number on studies on the subject and found that over 50% of older persons are affected by multimorbidity. They also established a causal link between its prevalence and socio-economic factors visible also in the much higher percentage of affected people in low-income countries.[55]

Linked to biological age, but arguably more restricting to older person's rights and freedoms is their **psychological age.** The most prevalent psychological conditions in old(er) age are depression and anxiety as well as the various forms of dementia.[56] These disorders are still highly stigmatized, undoubtedly influencing the way those affected by them are treated by society and professionals but also their families and communities.

[51] WHO, 2015, p.52.
[52] UN, 2017, p.52.
[53] Ibid., p.53-57.
[54] Ibid., p.62.
[55] Ibid., p.59f.
[56] WHO, *Mental health of older adults*, 2017, Available from http://www.who.int/news-room/fact-sheets/detail/mental-health-of-older-adults (accessed 19 July 2018).

Depression is one of the most prevalent conditions in old(er) age diagnosed in over 10% of people above 65 years of age. It encompasses the most common symptoms like loss of spirit and energy, sleeping problems as well as physical symptoms like fatigue, muscle pains and headaches. Regarding the incidence of depression, a correlation has been established with the level of dependency experienced by the person affected: the more other medical problems a patient has, and the more he therefore depends on the care of others, the higher the risk of depression. Living in a care home or being housebound at least doubles the probability of the condition.[57] Anxiety is also closely connected to depression in older persons and is a prominent factor for the fear of losing self-determination.[58] Needless to say, these conditions significantly affect a person's quality of life – but they can also lead to other medical conditions such as heart diseases and in a not insignificant number of cases it is linked to suicide.[59]

Early symptoms of dementia and depression can look very similar and are easily confused by non-professionals. Dementia is also one of the major health challenges of our time affecting over 24 million people worldwide with four and a half million newly diagnosed patients each year.[60] The disease is often falsely attributed to normal conditions of aging, whereas the causes lie in a variety of imbalances and abnormal structures to the brain. The various forms can impair memory and language, concentration, communication, special orientation, personality and behaviour as well as physical functions. The most common type of dementia is Alzheimer's disease which makes up about 70% of cases followed by vascular dementia.[61]

The last, and probably most influential category when it comes to the enjoyment of rights of older persons is that of **social age**. Margeret Chan, Director General of the WHO among others criticized that old stereotypes about age still linger in the mindset of our societies influencing perceptions of older persons and making it hard

[57] J. Manthorpe and S. Iliffe, *Depression in Later Life*, London, Jessica Kingsley Publishers, 2005, p.8.
[58] Ibid., p.215.
[59] Ibid., p.28.
[60] M. Downs and B. Bowers (ed.), *Excellence in Dementia Care*, New York, Open University Press, 2008, p.1.
[61] Ibid., p.12.

to implement innovative approaches (see more in chapter 5.2.).[62] Subjective perception of social exclusion and discrimination is in some cases still felt very strongly as some statements collected by HelpAge, an international research organization dealing with older persons, show. Participants describe how they still face verbal discrimination by being called "witches" and feeling that they are treated as second-class citizens and "derelicts" because of their age.[63] It is therefore a very important task for the upcoming years to counteract stereotypes depicting older persons as frail and dependent or even dissociated from society as several studies and observations have been able to clearly show the important contributions they make to society.[64]

Not only do these misconceptions affect the individuals in their freedoms and rights, they furthermore have a significant influence on policy making by framing age as a fixed, inflexible and inevitably negative life stage.[65] It is due to these views, that issues concerning age were for the longest time tackled with a (certainly benevolent but inadequate) focus on dependency and care. This has of course stressed many health care and pension systems – a problem which will continue to increase in the years to come. Therefore, promoting more autonomy and participation in society (see more in chapter 5.4.) would not only benefit the quality of life of older persons, but could also have a positive effect on society at large.[66]

As becomes apparent, a definition of older persons would require the acknowledgement of a great variety of different factors and the heterogeneity of this 'group', which is probably the reason why classifications and denominations vary consistently. If during the OEWGAs work toward a possible convention relating to old(er) age a definition can be agreed upon remains to be seen.

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[62] Ibid., p.vii.

[63] HelpAge International, 'Chapter 4: The voices of older persons', in *Ageing in the 21st Century A celebration and a challenge*, Available from http://www.helpage.org/resources/ageing-in-the-21st-century-a-celebration-and-a-challenge/ageing-in-the-21st-century-chapter-4-the-voices-of-older-persons/ (accessed 3 June 2018), p.152.

[64] WHO, 2015, p.10.

[65] WHO, 2017, para.16.

[66] WHO, 2015, p.8.

3. Do Older Persons require special protection of their rights through a separate international convention?

Matters concerning old(er) age have received very little attention in the past years in the human rights sphere, which is also reflected in the fact that only a fraction of recommendations of the different human rights treaty bodies deals with older persons.[67] But does that mean that there are no issues that require attention? It would rather seem that the lack of consideration stems from low prioritisation and no comprehensive point of reference for policy makers and older persons themselves.

The discussion about the necessity for having a specific convention for older persons has already far preceded the current discourse[68] and although the development has been moving quite slowly, many parties involved in the drafting process are underlining the necessity of a convention (see chapter 4.2.). Proponents were able to reason, that while there might be documents that directly or indirectly include older persons (see chapter 4.1.), those norms were not tailored to addressing more specific issues and the underlying causes thereof[69]. In comparison, the adoption of the ICRC has fundamentally changed how the human rights of children were discussed not only on an international but also on a regional and national level.[70] Some scholars even go so far as to say that it has been able enshrine its principles into the global framework so effectively, as to lift it to a level of customary international law.[71] Additionally, creating group specific conventions has in the past had an effect of "personification" and "pluralization" of human rights.[72] Such international conventions not only bear great legal importance, their didactic relevance should not be disregarded either. By providing a clear ethical

[67] OEWGA, 2017, p.9.
[68] Brems, p.147.
[69] Paul Harpur, 'Old Age is not just Impairment: The CRPD and the need for a Convention on Older Persons', *University of Pennsylvania Journal of International Law*, vol.37, no.3, 2016, p.1031.
[70] Doron, p.588.
[71] Ibid.
[72] Degener, p.9.

canon, they can more effectively raise awareness on issues important to species 'groups' and in consequence change general attitudes.[73]

A discussion on the necessity of a separate convention also found place at the OEWGA during its various session. In its second session for example, while some "delegations noted that existing international standards were sufficient but had been underutilized" others found that "existing international instruments, while applicable to older persons, did not offer adequate protection, visibility or specificity to older persons".[74] A consensus on this issue has to this day not been achieved by the working group, which has arguably hampered the progress made during its sessions (for more see chapter 4.2.).[75]

However, an international convention might not even be the most appropriate or effective means to advocate for older people's rights. From experience it can be said that sometimes states ratify conventions pro forma without (the intention of) transposing them into action and social change thus only affording "superficial" legal protection.[76]

An alternative to an international convention, which requires a lengthy process of consideration by different actors and states and would probably need concessions to be made to incorporate different viewpoints[77], would be to rely on existing frameworks or to set up a more comprehensive soft law standard instead. It has been argued that, due to its less pressuring character and often more pointedly formulated content such a document could achieve more impact than hard international law[78] and furthermore might influence the development of customary international law. However, such soft law documents already exist. The *Madrid International Plan of Action on Ageing*[79] (MIPAA) among others already fills the space of the international soft law framework on the rights of older people, but has not been sufficiently effective, raising doubts about the chance that another such

[73] Doron, p.589.
[74] OEWGA, 2011, p.18.
[75] OEWGA, 2013, p.19.
[76] Doron, p.589.
[77] Doron, p.589.
[78] Lindsay Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative standards*, 2008, Available from http://globalag.igc.org/elderrights/world/2008/internationallaw.pdf (accessed 18 June 2018), p.3.
[79] Madrid International Plan of Action on Ageing (adopted April 2002).

document might be.[80] On the other hand, the significant positive impact other conventions, such as the ICRPD, the ICEDAW and the ICRC, had on the rights protection of their 'groups' militates in favour of a binding convention.[81]

Another concern with the creation of a new document is the long-standing fear of human rights professionals, including delegates present at the OEWGA sessions[82], for a proliferation of existing standards and mechanisms through the introduction of new binding norms.[83] Their argument is that more laws do not always entail better protection – on the contrary, it may weaken the overall rights framework due to high cost of financial and personal resources. Too many norms distract governments from choosing what to focus on, while at the same time bearing the risk of creating incompatible provisions and increasing the overall cost of monitoring and implementation.[84] Politically, states and international stakeholders may abuse this, by shifting responsibilities and the focus to their advantage.[85]

This apprehension can however be countered by looking at the developments following the adoption of previous international conventions on the rights of specific groups, which have contributed to a more widespread and detailed protection of the concerned rights holders. An international convention would be able to subsume existing standards, clarify their scope and possibly individuate additional rights and freedoms. It would furthermore allow for a more detailed delineation of stated' duties and responsibilities, which as the case stands now are not explicitly laid down on an international level. It would further push for a more comprehensive coverage of such rights also at a national level.

While there are already some international soft law documents such as the *Madrid International Plan of Action on Ageing* and the *UN Principles for Older Persons*[86] and regional standards concerning the rights of older persons, for

[80] Doron, p.590.
[81] Doron, p.588.
[82] OEWGA, 2013, p.16.
[83] Judge, p.2.
[84] Daniel W. Drezner, 'Regime Proliferation and the Tragedy of the Global Institutional Commons', *Fletcher International Law And…*, discussion paper no. 1/2009, 2008, Available from http://fletcher.tufts.edu/FILA/~/media/Fletcher/Microsites/Fila/PDFs/FILADiscussionPaperNo0109.pdf (accessed 11 July 2018), p.19.
[85] Drezner, p.8.
[86] UN Principles for Older Persons, 16 December 1991, GA Res 46/91.

instance the *Inter-American Convention on Protecting the Rights of Older Persons* and the African Union *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa*, a comprehensive conceptual framework for policy responses to address implications for ageing societies is currently still missing (for a more detailed overview over the most relevant regional and international normative standards see chapter 4.1.). The fragmentation of norms and their incoherent applicability to old(er) age create a normative gap that requires a more specific focus on the needs and preferences of older people.

It's nevertheless important to keep in mind that patterns of ageing are highly divers and variable and thus need to be addressed as such. It might be argued, that due to this heterogeneous character it would not be possible to subsume older persons into one group, which would make a comprehensive convention unfeasible. However, this could be attribute to other 'groups' as well, such as women, children and persons with disabilities, who still found protection in a separate convention. This point therefore doesn't categorically constitute a valid argument against a convention.[87]

Older persons face many specific difficulties and barriers, which can be attributed to their age and related social, medical or economic status. These can lead to among others discrimination, poverty and unemployment, inadequate health policies and vulnerability to abuse. While it can be argued, that these issues could already be covered with other convention, their heightened emergence in old(er) age creates a need for addressing in a targeted manner. The fact that discrimination on the basis of age for example is explicitly prohibited only under one regional instrument[88] and not even mentioned in the international sphere does not support shifting policy makers' focus on the issue. Ageism has been a cause for lacking human rights protection for older person, warranting the development of a normative framework to address it in a targeted manner and providing a framework for policy making.[89]

As long as rights and duties of older persons and states respectively are not clearly defined, be it as a result of negligence or for general societal reasons, a

[87] Brems, p.147.
[88] Charter of Fundamental Rights of the European Union (2012) OJ C 364/01.
[89] Harpur, p.1033.

comprehensive, equal protection can hardly be ensured. Soft law standards dealing with old(er) age have proven to not be effective enough to ensure full and equal protection and relying exclusively on existing norms with different or general focus obscures the specific needs that may be encountered in old(er) age.[90] I would therefore argue that the creation of an International Convention on the Rights of Older Persons has its justifications.

4. The discussion surrounding the development of an International Convention on the Rights of Older Persons

First attempts at moving for a solidification of the rights of older persons on UN level came from Argentina in 1948 with draft declaration A/C.2/213.[91] These efforts however did not lead to drafting a new convention but at least spurred the discussion on the issue and paved the way for some related soft law documents like the UN *Principles for Older Persons.*[92] About half a decade later the Canadian NGO International Federation on Ageing together with the Mission of the Dominican Republic to the UN again pushed for creating a convention, unfortunately without achieving the desired result either.[93]

In the following two subchapters I will give an overview over existing standards that deal with older persons' rights directly or indirectly, on an international and on a regional level (chapter 4.1.). I will then delineate the hitherto existing discourse around the development of an international convention considering the OEWGAs work and focus points as well as the general attention brought to it in relation to other conventions such as the ICEDAW and ICRPD (chapter 4.2.).

[90] OEWGA, 2014, p.7.
[91] Government of Argentina, *Argentinian Draft Resolution on a Declaration of Old Age Rights*, New York, 1948.
[92] Sciubba, p.468.
[93] Ibid., p.462.

4.1. Existing Standards on Older Persons' Rights

Interestingly, although older persons would seem to deserve empowerment and special protection, there is very little in the field of Human Rights relating to them specifically. There are numerous conventions and binding standards for other 'groups' such as children, women or persons with disabilities but not yet on older persons.

Of course, **international human rights laws and standards** with a general focus intrinsically cover older persons' rights. The *Universal Declaration of Human Rights* (UDHR) specifically makes no "distinction of any kind"[94] for the applicability of the rights contained therein. The *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic Social and Cultural Rights* (ICESCR) respectively recognise "the inherent dignity and […] equal and inalienable rights of all members of the human family".[95] In *General Comment Nr. 4* relating to the right to adequate housing set down in article 4 of the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) expressly also condemns any discrimination based on age[96] and mentions older persons as one of the "disadvantaged groups"[97] that should be afforded special attention in matters of availability of adequate housing. Furthermore, the CESCR published a separate general comment explicitly addressing the rights of older persons making specific reference to article 3 on gender equality, article 6-8 on the right to work, article 9 on social security, article 10 on the protection of the family, article 11 on an adequate standard of living, article 12 on physical and mental health and article 13-15 on education and culture.[98]

Other UN conventions on the other hand make specific reference to age in one form or another and apply to aspects relevant to many older persons as well. The ICRPD in its preamble mentions the concern with cumulative effect of discrimination that can come with old(er) age[99] and emphasises the importance of

[94] Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948) A/810, art.2.
[95] ICCPR, preamble; ICESCR, preamble.
[96] CESCR, *General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant),* 13 December 1991, para.6.
[97] Ibid., para.8(e).
[98] CESCR, 1995, para.20-42.
[99] ICRPD, preamble(p).

awareness raising to counter negative bias.[100] The ICEDAW only refers to the rights to equal social security for older women.[101] The first international convention to specifically list 'age' as a prohibited ground for discrimination was the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICMW) in two separate Articles - on the applicability of the convention[102] as well as the state's duty to indiscriminately ensure the rights contained therein.[103] It nevertheless does not specifically mention *old* age in any way.

Besides these binding standards, there are several **international soft law documents, declarations and guidelines** that deal with the topic of older persons' rights, which below I would like to chronologically give an overview of.

Drafted during the first world Assembly on Ageing in 1982, the *Vienna International Plan of Action on Ageing*[104] (VIPAA), with a humanitarian and developmental focus, formulates 62 recommendations in 7 focus areas (health, consumers, housing and environment, family, social welfare, income security and employment and education) as well as several policy recommendations. The plan was rated very positively by different relevant stakeholders and its usefulness in guiding policy developments has been duly recognised.[105] Nevertheless, rapid societal developments and global population ageing soon surpassed the scope of the plan bringing up concerns about its focus and primary applicability to developed countries.[106]

The *UN Principles for Older Persons* adopted in 1991 are contained in a short 2-page document and are comprised of 18 points organised into five focus areas (independence, participation, care, self-fulfilment and dignity). Equally brief and

[100] Ibid., art.8, para.1(b).
[101] ICEDAW, para.11(1e).
[102] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, para.1(1).
[103] Ibid., para.7.
[104] Vienna International Plan of Action on Aging (adopted 6 August 1982).
[105] Alexandre Sidorenko and Alan Walker, 'The Madrid International Plan of Action on Ageing: from conception to implementation', *Ageing and Society*, vol.24, no.2, 2004, p.149.
[106] UN Secretary-General, *Towards the 2nd World Assembly on Ageing* (13 December 2000) E/CN.5/2001/PC/2, para.21.

condensed is the 1992 United Nations *Proclamation on Ageing*[107] which already acknowledges the need to address the issue of population ageing also specifically in developing countries. It stresses the importance of awareness raising on rights of and contributions by older persons and the implementation of existing standards.

The MIPAA[108] was drafted another 10 years later during the Second World Assembly on Ageing in 2002 to replace the by the 20 years old VIPAA. Together with its predecessor it has been the baseline from which the UN and affiliated states developed most of their national and regional initiatives on ageing.[109] Built on the concept of a "society for all ages", a term coined during the international year of older persons 1999, it divides its attention onto three priorities: development, health and age-friendly environments, with a total of 239 targeted recommendations. The first area encompasses issues that have an impact on a macro level such as societal and rural development, work and education as well as poverty and crisis situations. The area dealing with health puts a focus on the level of the individual's well-being by looking at access to health care for different conditions. It furthermore addresses the need for better training of professionals. The third area concerns the family and community level, and deals with housing, support for caregivers, violence against older persons and ageist stereotypes.

The MIPAA retained the VIPAAs previous focus on development emphasising the interconnectedness of global population ageing and overall societal and economic development.[110] Acknowledging more recent changes in population structure, the plan gives significantly more attention to the needs of older persons in developing countries. This is explicitly recognised in the political declaration accompanying the MIPAA and shows for example in the introduction of a separate priority issue on HIV/AIDS and references to 'developing countries' made a total of 69 times throughout the document within the introduction and on other issues such as work and housing. The MIPAA proposes specific actions for national and

[107] UN Proclamation on Ageing, 16 October 1992, GA res 47/5.
[108] Madrid International Plan of Action on Ageing (adopted April 2002).
[109] Dilek Aslan, 'A long way since the Vienna International Plan of Action on Ageing… 1st of October, the international day for older persons…', *Turkish Journal of Geriatrics (Turk Geriatri Dergisi)*, vol.19, no.4, 2016, p.4.
[110] Sidorenko, p.152.

international implementation and further emphasises the importance of future research and data collection on ageing worldwide (see chapter 5.17.).

With the 2007 Brasilia Declaration the Latin American states called for the international community to more intensely deal with older persons' rights by promoting the creation of a convention on the rights of older persons and considering the appointment of a special rapporteur for the issue.[111] Their commitment to push forward a comprehensive coverage of human rights and freedoms in old(er) age through a binding international legal framework was repeatedly reconfirmed during different follow-up meetings the following years. Especially Argentina stood out in the discussions surrounding a new convention and remained at the forefront of the discourse until the creation of the OEWGA.[112]

After the expiring of the *Millennium Development Goals*[113] in 2015, the UN *Sustainable Development Goals*[114] ensued in their footsteps. Reacting to criticism about the lack of inclusion of older persons in the former[115], older persons were now referred to in most areas. Some explicitly address older persons: Goal 1 aims at significantly reducing (with the goal of ending) poverty among all age groups, considering also the gender perspective. Goal 2 addresses food security and nutritional needs including of older persons. Goal 3 on health and well-being is directed at all age groups as well. Goal 10, focusing on reducing inequality and the promotion of inclusive societies, also specifically excludes any distinction based on age. Goal 11 supports sustainable cities and communities, giving special attention to transportation being built in accordance with the needs of older persons among others as well as making public spaces accessible to everyone.

Others are relevant to old(er) age in a broader sense: Goal 4 promotes education for all, being relevant to the topic of life-long learning (see chapter 5.13.). Goal 5

[111] Brasilia Declaration (6 December 2007), para.25-26.
[112] Sciubba, 468.
[113] United Nations Millennium Declaration (adopted 18 September 2000) GA Res 55/2, para.19-20.
[114] GA, *Transforming our world: the 2030 Agenda for Sustainable Development*, in Resolution A/RES/70/1, 2015, pp.14-27.
[115] HelpAge International, *Building a future for all ages. Creating an age-inclusive post-2015 development agenda.* 2012, Available from http://www.helpage.org/resources/publications/?ssearch=Building+a+future+for+all+ages%3A+Creating+an+age-inclusive+post-2015+development+agenda&adv=0&topic=0&region=0&language=0&type=0 (accessed 20 July 2018), p.2.

on gender equality doesn't specifically mention older persons but is nevertheless relevant for promoting just and equal conditions also at a later stage of life. Goal 8 aims at sustainable economic growth, full employment and appropriate work conditions. Though not addressed explicitly, it is related to older persons participating and contributing as well. Goal 9, related to industry, innovation and infrastructure is also phrased without reference to a specific (age) group. However, better investment in and development of these sectors would undoubtedly benefit older persons and their enjoyment of their rights. Goal 13 on climate action is relevant insofar as older persons in vulnerable circumstances could be particularly affected. Similarly, Goal 15, focusing on life on land and related issues, can be considered applicable. Especially land degradation is most detrimental to people living in poverty, therefore disproportionately affecting older persons. Goal 16 lastly does not mention age in any way either, but peace and justice are a prerequisite for an inclusive society in which all can enjoy their rights.

Older Person only sparsely find protection under international **humanitarian law** even though they might be particularly vulnerable in times of conflict, natural disasters or other crisis situations (see chapter 5.16.).[116] The Fourth Geneva Convention for example considers the implementations of "safety zones" [117] for, among others, older persons and their "removal from besieged or encircled areas".[118] The United Nations Refugee Agency recognises the aggravated challenges met by older refugees and has issued a short Policy on Older Refugees, though also stressing the importance of moving away from a deficit-centred victims approach to more participatory, contribution-centred efforts.[119]

On a **regional level** the *Charter of Fundamental Rights of the European Union* for instance specifically sets down the "right of the elderly to lead a life of dignity and

[116] Judge, p.9.
[117] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art.14.
[118] Ibid., art.17.
[119] United Nations Hight Commissioner for Refugees (UNHCR), *Policy on Older Refugees*, 2000.

independence and to participate in social and cultural life".[120] It furthermore includes "age" as ground protected against discrimination[121] and recognises the right to access social benefits in old(er) age.[122]

With the *Community Charter of the Fundamental Social Rights of Workers* the EU has already in 1989 attempted to safeguard the rights of older persons, albeit strictly in the framework of economic participation. In a section on "Elderly Persons" it focuses on retirement and access to health and social services while making it fully dependent on national legislation.[123]

In the Inter-American system early attempts to include older persons in a protective framework can be found in the 1948 *American Declaration on the Rights and Duties of Man*[124] and the 1969 *American Convention on Human Rights.*[125] The scope of the declaration for instance is however relatively limited, making old(er) age an issue only in the context of social security[126] and capital punishment.[127]

Older persons' rights are enshrined more comprehensively in the 2015 *Inter-American Convention on Protecting the Rights of Older Persons.*[128] The Convention explicitly highlights the importance of a HRBA and the need for a comprehensive legal instrument to ensure older persons can enjoy their rights. It does not shy away from narrowing down who 'older persons' are with regard to the convention and defines them as being of 60 years of age upwards but concedes a margin of 5 years for national legislation to determine. On the other hand, it acknowledges 'old age' to be a "social construct at the last stage of the life course" somewhat relativizing the definitions set down in the convention and recognising that such determinations are culturally specific and can be subject to change. Emphasising the important contributions made by older persons to their families,

[120] Charter of Fundamental Rights of the European Union (2012) OJ C 364/01, art.25.
[121] Ibid., art.21.
[122] Ibid., art.34.
[123] Political Declaration of the Community Charter of fundamental Social Rights of Workers (adopted 9 December 1989), Art.24-25.
[124] American Declaration on the Rights and Duties of Man (adopted 1948) AG/RES. 1591 (XXVIII-O/98).
[125] American Convention on Human Rights (adopted 22 November 1969).
[126] American Declaration on the Rights and Duties of Man, art.16.
[127] American Convention on Human Rights, art.4.5.
[128] Inter-American Convention on protecting the Rights of Older Persons.

communities and society, the drafters consciously stepped away from a humanitarian approach to one of empowerment and participation.

The content of the convention encompasses a very wide range of rights including economic, social and cultural rights as well as – equally broadly – civil and political rights. These are subsumed under the core values of equality and non-discrimination, dignity and integration and autonomy. All the rights contained therein are based on an overarching principle of non-discrimination based on age and mainstreaming of a gender-perspective in all decision-making and development strategies.[129]

The Convention was the first supranational legislation entirely dedicated to older persons and has received a record number of signatures in its first days[130] demonstrating the wide acceptance for the convention. Significantly it also appointed a Committee of Experts tasked with monitoring implementation and receiving periodic state reports and instated a complaint mechanism for groups and individuals. The Inter-American Convention on protecting the Rights of Older Persons has been considered a breakthrough in the global movement towards a more comprehensive protection of older persons' rights and thus serves as an additional affirmation of the significance of the work being done by the OEWGA towards the creation of a correspondent international convention.

In the African system the *African Charter on Human and Peoples' rights* shortly mentions the entitlement of older persons to "special measures of protection in keeping with their physical or moral needs"[131] without however further specifying them. Recognising the cumulative effect of age and gender discrimination, the *Protocol to the African Charter on the Rights of Women in Africa* affords older women special protection in the context of health, economic participation and freedom from violence and discrimination among others.[132]

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[129] Francesco Seatzu, 'Sulla convenzione dell'organizzazione degli stati americani sui diritti delle persone anziane' (On the Inter-American Convention on the Rights of Older Persons), *Anuario español de derecho internacional*, vol.31, 2015, p.357.

[130] Ibid., p.350.

[131] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev.5, Art.18.4.

[132] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 1 July 2003, entered into force 25 November 2005), art.22.

A more in-depth coverage can however be found in the very recent African Union (AU) *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.*[133] The AU takes its definition of 'older persons' from the UN (see chapter 2.) and defines 'ageing' as the "process of getting old from birth to death"[134] therefore building on the basis of a life cycle approach.

The model of a life cycle approach has more frequently been used in an economic[135] and savings context [136], but also in relation to family[137] and development[138]. Such an approach has been also applied in areas such as for example women's rights[139] and the rights of persons with disabilities[140] to account for changes that occur during the life course and shape their present and future experience. Ageing is not a separate stage of life, it is a continuum that evolves over the whole life course.[141] The human rights of older persons can therefore not be examined distinctly but require a holistic approach that takes into account resources, opportunities, barriers and personal characteristics experienced from childhood on.

Another speciality found in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, in contrast to the other documents mentioned here, is the visible influence of cultural relativism – most noticeable in the preamble which recalls "the virtues of African traditions, values and practices".[142] Two distinct focuses are furthermore introduced: article 12 on

[133] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (adopted 31 January 2016).
[134] Ibid., para.1.
[135] Richard B. Chase and Nicholas J. Aquilano, *Production and operations management : a life cycle approach*, Homewood (Ill.), Irwin, 1992; Ana Mestre and Tim Cooper, 'Circular Product Design. A Multiple Loops Life Cycle Design Approach for the Circular Economy', *The Design Journal*, vol.20, 2017, pp.1620-1635.
[136] Joachim K. K. Winter, Kathrin Schlafmann, and Ralf Rodepeter, 'Rules of Thumb in Life-cycle Saving Decisions', *Economic Journal*, vol.122, 2012, pp.479-501.
[137] James P. Smith, *A Life Cycle Family Model*, Cambridge (Mass.), National Bureau of Economic Research, 1973; S. Mudrazija, 'The balance of intergenerational family transfers: A life-cycle perspective', *European Journal of Ageing*, vol.11, no.3, 2014, pp.249-259.
[138] Sonia G. Austrian, Developmental theories through the life cycle, New York, Columbia University Press, 2008.
[139] UN, *The World's Women 2015: Trends and* Statistics, New York: United Nations, 2015, p.v.
[140] G. Grant et.al., *Learning Disability: A Life Cycle Approach*. Maidenhead, McGraw-Hill Education, 2010, p.1.
[141] John Bond et.al. (ed.), *Ageing in Society. European Perspectives on Gerontology*, London, Sage Publications, 2007, p.20.
[142] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, preamble.

“Older persons taking care of vulnerable children” and article 20 on “Duties of Older Persons”. Both highlight the valuable contributions made by older persons to their families and communities as caregivers, teachers and mediators (see chapter 5.4.). The negative side to tradition is addressed in Article 1 and 8 by acknowledging the impacts of harmful traditional practices affecting older persons, witchcraft being specifically mentioned as an example (see chapter 5.14.). The Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Older Persons in Africa has yet to enter into force, thus leaving an analysis of its implementation and impact for a later point.

As has been shown, although the importance of the topic of older persons’ human rights is recognised, the legal framework is still limited. The international human rights sphere includes older persons mostly intrinsically in other group-specific or general conventions, the UN Principles on Older Persons and the UN Proclamation on Ageing as well as the SDGs, which have all been valuable in driving the discourse but are of a non-binding nature. International humanitarian law offers some protection in old(er) age but only in very concise contexts. On a regional level there are the Inter-American Convention on Protecting the Rights of Older Persons and the Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Older Persons in Africa, which were both important documents in the field of older persons rights and would be valuable resources for any considerations concerning a possible International Convention on the Rights of Older Persons.

4.2. How has a possible International Convention on the Rights of Older Persons been discussed in relation to existing international standards relating to other ‘groups’?

Although this chapter has some overlaps with chapter 3 the emphasis is meant to be a different one. While the previous chapter had a focus on establishing the gap in rights protection for older persons, this chapter delineates how the creation of a possible Convention on the Rights of Older Persons has been discussed and considered in recent years and how it has been related to existing standards.

In 2010 the UN GA established the OEWGA with a mandate to assess the current human rights framework in relation to older persons, identify shortcomings and consider the development of additional instruments.[143] The latter was further reiterated in 2012 when the GA specifically tasked the working group with overseeing and guiding efforts towards an International Convention on the Rights of Older Persons. In its delineation of the scope of work specific reference was made to areas of "social development, human rights and non-discrimination, as well as gender equality"[144] setting some clear orientation points for the working group's consideration. However, despite repeated impulses by the working group's chairs and delegation members, no draft has yet been submitted.[145] This is owed to the clear lack of unanimity on many issues, but most importantly also on the key question of the necessity of a new convention. Nevertheless, during its eighth session in 2017, the working group's chair made clear, that it would not be sensible to wait for consensus, but rather to move forward with preparing a draft.[146]

The resolution to create the OEWGA and its mandate was still an eagerly awaited and important step towards the achievement of a comprehensive tool for the protection of older persons' rights at an international level.[147] However, the voting history for this decision shows the somewhat cautious support the initiative has received at that time – 54 states voted in favour, 5 against the resolution while 118 abstained.[148] Why this might be the case could be explained by several factors. States, especially where the rate of ratification for international conventions is lower, might be reluctant to be bound by yet another convention. It might be related to the general backlash against human rights experienced in recent years[149] that could entail a general move away from ratifications. Or it could be attributed to old societal notions about old(er) age that still linger in people's perceptions, and

[143] UN GA Res 65/182, 21 December 2010, para.28.
[144] UN GA Res 67/139, 20 December 2012, para.1.
[145] OEWGA, 2014, p.8; OEWGA, 2015, p.10.
[146] OEWGA, 2017, p.13.
[147] Herro, p.90f.
[148] UN GA 67th session, *60th Plenary Meeting* 67/PV.60, 20 December 2012, 3f.
[149] Andrew Gilmour, *The global Backlash against Human Rights* (edited lecture text), University of California, Sacramento, March 2018, Available from https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23202&LangID=E (accessed 10 July 2018); Amnesty International, The backlash – Human Rights at risk throughout the world, 2001, Available from https://www.amnesty.no/aktuelt/flere-nyheter/arkiv-nyheter/backlash-human-rights-risk-throughout-world (accessed 10 July 2018).

hinder the development of modern, inclusive norms. However, lacking universal support for a Convention on the Rights of Older Persons should not hamper discussion and development, and would not make any result less significant.[150]

In a thorough text analysis of OEWGA documents, Herro has recently determined which issues have most frequently been discussed in its practice. By looking at the subjects in the session agendas, she found that a clear focus seems to have been lying on economic and social rights (63%) with civil and political rights evidently receiving less attention (26%) and cultural rights on the other hand hardly being addressed at all (2%).[151] These findings are supported by other studies which also found an emphasis has been put on older persons' economic and social rights.[152] Furthermore, the OEWGA, when referencing to international human rights instrument, more frequently addressed issues covered by the ICESCR than the ICCPR.[153]

In addition to the working group, the Human Rights Council appointed an Independent Expert on the Enjoyment of all Human Rights of Older Persons with a parallel but separate mandate from the OEWGA.[154] The Independent Expert has also recognised, that the MIPPA doesn't effectively protect the human rights of older persons and that the creation of a more comprehensive protection would be needed.[155]

The most referenced international convention in the scientific discourse around a Convention on the Rights of Older Persons is the ICRPD. It is the only convention on UN level to specifically deal with older persons and thus has been influencing the framework and mindset concerning old(er) age. This has occurred in a context that argues against the need for a separate convention but also referring to it as a standard for providing "additional protection"[156] for older persons who might be

[150] OEWGA, 2013, p.19.
[151] Herro, p.94.
[152] F. Mégret, 'The Human Rights of Older Persons: A Growing Challenge', *Human Rights Law Review*, vol.11, no.1, 2011, p.51; Herro, 99f.
[153] Herro, p.94.
[154] Human Rights Council Res 24/20, 27 September 2013.
[155] Independent Expert on the enjoyment of all human rights by older persons, *Report of the Independent Expert on the enjoyment of all human rights by older persons*, 8 July 2016, A/HRC/33/44, para.123.
[156] Judge, p.6.

affected by barriers preventing them from fully enjoying their rights regardless of any functional impairment.

It has been argued, that the development of the ICRPD has in some ways supported the movement towards a convention on the rights of older persons as it fuelled discussions on the rights contained therein in relation to old(er) age which in turn raised awareness for areas which are still inadequately covered.[157] In any case the current discourse can benefit from norms diffusing from the ICRPD (such as its approach to non-discrimination, autonomy or the right to health) and the additional push in promoting the importance of advocating for the rights of vulnerable groups in general, and older persons in particular. The OEWGA has previously also consulted the Chair of the Committee on the Rights of Persons with Disabilities and considered possible learnings from the development of the ICRPD.[158]

The well-established social model of disability for instance, standing in stark contrast to the medical model which focused on curative approaches to disability[159], regards impairment as a human variation and disability as a social construct that creates inequality.[160] While this approach is already closely linked to a rights-based approach to disability, the ICRPD has been interpreted as following a human rights model, that more comprehensively addresses the whole spectrum of human rights.[161] Considering the need to frame the discussion in relation to older persons in a similar way which recognises ageing and possible related function loss as a normal part of live, it seems sensible to adopt the social and/or human rights model of the ICRPD.

Comparisons between the two 'groups' – person with disabilities and older persons – appear reasonable, seeing as the risk of illness and also impairment increases with age, and a significant number if not most older persons will be affected by barriers which might restrict their mobility, autonomy and/or quality of life. Eliminating those barriers is crucial to guarantee the full enjoyment of all rights and freedoms for all.

[157] Sciubba, p.471.
[158] OEWGA, 2016, p.8f.
[159] Degener, p.2.
[160] Degener, p.3.
[161] Degener, p.4f.

Nevertheless, the ICRPD has not only added positively to the efforts made in the development of a new convention, it has also been seen as an obstacle. Due to the strong support it has received since its adoption, many states are still working on its implementation and struggling especially with the costs this entails and might thus be unwilling to pledge themselves to yet another obligation.[162] In this light it might be difficult to gather substantial backing for a new convention, explaining also, why the discussions around it have been moving forward rather slowly. Furthermore, it has been argued that having positioned older persons so closely to persons with disabilities, therefore focusing on older persons with some kind of impairment, poses significant obstacles for the efforts surrounding a separate Convention on the Rights of Older Persons.[163]

Following the initial focus of the 2012 resolution, a connection to standards related to gender equality and women's rights, especially ICEDAW, has also been drawn. The Committee on the Elimination of Discrimination against Women (CEDAW) has recognised that women often experience more discrimination in old(er) age, due to factors accumulated throughout their life course, and depending on their socio-economic environment.[164] The ICEDAW has therefore been seen as having an overwhelmingly positive influence on older women's enjoyment of their human rights by addressing inequalities already at an earlier stage.[165] By adopting a "life-cycle approach"[166], similarly to the ICRPD, the Committee acknowledges that ageing is a life-long process that is shaped by a wide range of factors, and that the enjoyment of human rights in old(er) age requires comprehensive protection and empowerment from early life onwards.

As mentioned before, a consideration in relation to the ICRC has received very little attention. It would therefore have been interesting to know to what extent (if at all) the Convention on the Rights of the Child has been considered in the discussions of the OEWGA. As I couldn't find any mentions in their session reports

[162] Sciubba, p.471.
[163] Harpur, p.1032.
[164] Committee on the Elimination of Discrimination against Women, *General recommendation No. 27 on older women and protection of their human rights*, 16 December 2010, UN Doc CEDAW/C/GC/27, para.11f.
[165] Elvis Fokala Mukumu, 'The protection of the socio-economic rights of older women: an appraisal of General Recommendation 27 of the CEDAW Committee: feature', *ESR Review: Economic and Social Rights in South Africa*, vol.12, no.1, 2011, p.6.
[166] CEDAW, 2010, para.15.

and other documents I tried contacting the working group over their official channels but have unfortunately not received any response. Such an inquiry would undoubtedly have been beneficial to the findings of this thesis and would be an interesting subject for further inquiry.

Looking back at the development of the discussion within the OEWGA, there is a clear shift towards accepting the need for a separate Convention on the Rights of Older Persons, even though full consensus has yet to be achieved. While no draft document has been presented to this day, the working group is regularly discussing key focus areas also in relation to other conventions. The ICRPD for example can offer several relevant points of reference and is therefore being considered actively for its general framework and substantive articles. The ICEDAW too has been a useful point of reference in some areas. Considering possible learnings from the ICRC however doesn't seem to have been part of any discussions so far. It is yet unclear whether it would be sensible to pay more attention to it, which is what this Master thesis intends to find out.

5. Key issues for older persons, how they are addresses in the ICRC and Gaps

In the following sub chapters I will discuss how some of the most relevant key issues relating to older persons could benefit from a reflection on their respective consideration in the ICRC. To establish those key issues, I subjected some relevant documents, such as the ones mentioned in chapter 4 to a thematic analysis in order to discern some of the most relevant conventions and documents on a regional and international level dealing with older persons' rights. I systematically evaluated the content of these documents through reading and interpretation while considering its original purpose and context as described by Bowen[167] and in doing so individuated a selection of seven documents on which to focus in my further analysis.[168]

[167] Bowen, p.32-33.

[168] CESCR, 1995; Inter-American Convention on protecting the Rights of Older Persons, 2015; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, 2016; MIPAA; VIPAA; UN Principles for Older Persons, 1991; OEWGA, Report of the Open-ended Working Group on Ageing, Second working session, 2011; OEWGA, Report of the

From these sources I then inductively individuated the most important focus areas using methods from grounded theory[169] and qualitative content analysis.[170] By reading the documents and collecting the areas relevant to older persons rights focused on therein I have been able, after several rounds of re-evaluation and adaptation, to individuate a total of 17 categories (whereas one of them, cumulative discrimination, is further divided to provide more structure). Where possible and sensible, I tried to name the categories in accordance with the most common or overarching classification found in the documents and reduced the number of categories by grouping alternative terms and similar concepts through subsumption.[171] As my focus was not on scrutinising correlations between the different categories I omitted a detailed analysis of their relationships and only highlighted them when necessary.

For establishing if and how these areas have been addressed in the scope of the ICRC I applied the previously established categories to its relevant articles through deductive category application. I then interpreted the single provisions in light of their scope and possible usefulness in the context of old(er) age. In order to do this, I further considered additional information primarily general comments and the optional protocols to the ICRC. Keeping in mind the background of the current discussion on the issue of older persons' rights and focusing on the applicability for a future Convention on the Rights of Older Persons this analysis is aimed at determining possible good examples and parallel areas as well as gaps.

In table 1 are listed the documents I used in my analysis and general categories mentioned therein. A quantitative analysis of the frequency of mentions of the categories is further illustrated in figure 2. As this was however not my subject of interest, I did not concentrate on examining these numbers specifically but used them as an additional indicator for the relevance of different topics. A detailed list of the categories, how often they have been discussed and which alternative and

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Open-ended Working Group on Ageing, Third working session, 2012; OEWGA, Report of the Open-ended Working Group on Ageing, Fourth working session, 2013; OEWGA, Report of the Open-ended Working Group on Ageing, Fifth working session 2014; OEWGA, Report of the Open-ended Working Group on Ageing, Seventh working session, 2016; OEWGA, Report of the Open-ended Working Group on Ageing, Eight working session, 2017.

[169] Boehm, 1994.

[170] Mayring, 1999.

[171] Mayring, 1999, p.92.

additional designations were included under the general terms can be found in Table 2. The grouping of terms was based on their appearance in the documents themselves and, in cases of terms being mentioned only sporadically or in an undefined manner I have added them to the most fitting term based on my own assessment. Examples of such terms are 'personal liberty'[172], which was only mentioned in the Inter-American Convention on protecting the Rights of Older Persons and 'consumers'[173], dealt with in the VIPAA which were grouped under 'adequate standard of living', 'duties of older persons'[174], which were addressed in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and was put under 'participation'. Furthermore, due to the ambiguous contextualisation of food in the different documents I have grouped 'food' under 'adequate standard of living' and 'nutrition' under 'health'. Some terms were mentioned only once and could not unequivocally be assigned to one of the general topics, as these would rather constitute separate categories. This included the rights to life, a nationality, movement, privacy and intimacy. Although these issues are important and would most definitely merit to be addressed in an International Convention on the Rights of Older Persons, I have not considered them in my analysis in an effort to focus on the most frequently mentioned items.

[172] Inter-American Convention on protecting the Rights of Older Persons, art.13.
[173] VIPAA, recommendation 18.
[174] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.20.

Table 1: Categories mentioned per document

Category \ Document	Inter-American Convention	Protocol to the African Charter	CESCR General Comment nr.6	Vienna Plan of Action on Ageing	Madrid Plan of Action on Ageing	UN Principles	OEWGA session reports *
Dignity	✓					✓	✓ 3,4
Age-based Discrimination	✓	✓	✓	✓	✓		✓ 2,3,4,7,8
Cumulative Discrimination	✓	✓	✓	✓	✓		✓ 2,3
Participation	✓		✓	✓	✓	✓	✓ 2,7,8
Adequate Standard of Living	✓		✓	✓	✓	✓	✓ 2,3,4,7
Work	✓	✓	✓	✓	✓	✓	✓ 4,7
Social Security	✓	✓	✓	✓	✓		✓ 2,3,4,7
Health	✓	✓	✓	✓	✓	✓	✓ 2,3,4,7
Long-term Care	✓	✓			✓	✓	✓ 3,5,7
Family		✓	✓	✓	✓		
Autonomy and Self-determination	✓	✓					✓ 3,7
Age-friendly Environment	✓	✓	✓	✓	✓	✓	✓ 7
Education and Culture	✓	✓	✓	✓	✓	✓	✓ 4,7
Violence and Abuse	✓	✓			✓		✓ 2,3,5,7,8
Access to Justice	✓	✓				✓	✓ 3,7
Crisis Situations	✓	✓	✓		✓		
Research and Training		✓	✓	✓	✓		✓ 2

* the numbers indicate in which session report the topic has been addressed ($_2$ meaning second session report etc.)

The different topics relating to old(er) age are in many cases strongly interconnected, which complicates a purely distinctive discussion, some issues will therefore come up in different contexts in the course of my analysis and are discussed in view of the respective issues.

Category	count	Alternative/additional terms
Dignity	3	
Age-based Discrimination	6	Discrimination on the basis of/for reasons of age/against older persons, equality and non-discrimination, ageism, stereotypes, images of ageing
Cumulative Discrimination	6	Multiple discrimination, gender, women, equal rights of men and women, disability, migration, rural areas, sexual orientation, gender identity, indigenous peoples, poverty, social exclusion, homeless, people deprived of their liberty, traditional peoples, ethnic, racial, national, linguistic, religious groups
Participation	6	Contributions, decision/policy making, associations and assembly, community integration, volunteering, political rights/participation, duties, social welfare, active participation in society and development, intergenerational activities, freedom of expression and opinion, access to information, social exclusion
Adequate Standard of Living	6	food, water, shelter, housing, clothing, personal liberty, poverty, consumers, healthy environment, age-integrated communities
Work	7	employment, work environment/conditions, ageing labour force, labour discrimination, retirement preparation programmes,
Social Security	6	old-age insurance, benefits, income security
Health	7	health care, health services, active ageing, healthy ageing, prevention, health care systems, mental health, physical health, sexual/reproductive health, HIV/AIDS, traditional/alternative/complementary medicine, well-being, accidents
Long-term Care	5	care, institutional care, community care, residential care
Family	4	older persons as carers/taking care of vulnerable children, traditional support systems, community, support of caregivers,
Autonomy and Self-determination	3	independence, right to make decisions, free and informed consent on health matters, property, choice of residence, personal mobility
Age-friendly Environment	7	transport, mobility, access, accessibility, information, communication, facilities/services, preferential fees

Education and Culture	7	education(al) programmes, literacy training, life-long learning, access to university, access to knowledge, transmission of knowledge, elderly as teachers, access to culture, contribution to culture, recreation, leisure, sports
Violence and Abuse	4	physical/psychological/sexual/financial abuse, neglect, safety, torture and other cruel inhuman or degrading treatment or punishment, harmful traditional practices, mistreatment, exploitation
Access to Justice	4	legal services, recognition before the law, equal protection before the law
Crisis Situations	4	emergency situations, war, armed conflict, natural or other disasters, situations of risk
Research and Training	5	better data, coordination, gerontology, geriatrics, awareness raising, international cooperation

Table 2: Categories, number of mentions and alternative/additional terms included in this category

Following the structure, I present the individual categories one by one. I first give an overview on each, delineate in what way it affects older persons, and shortly present how the issue is addressed in other standards, mainly the ones identified in Chapter 4.1. Then, considering if and how the ICRC has addressed the topic by looking at the relevant articles in the convention, I will analyse if it would make sense to consider their applicability in the context of old(er) age. Where relevant I also identify interrelations between rights and conditions during childhood and their possible impact for older persons. Finally, I also identify gaps have not been addressed in the ICRC that would however be beneficial if addressed by a possible new Convention on the Rights of Older Persons.

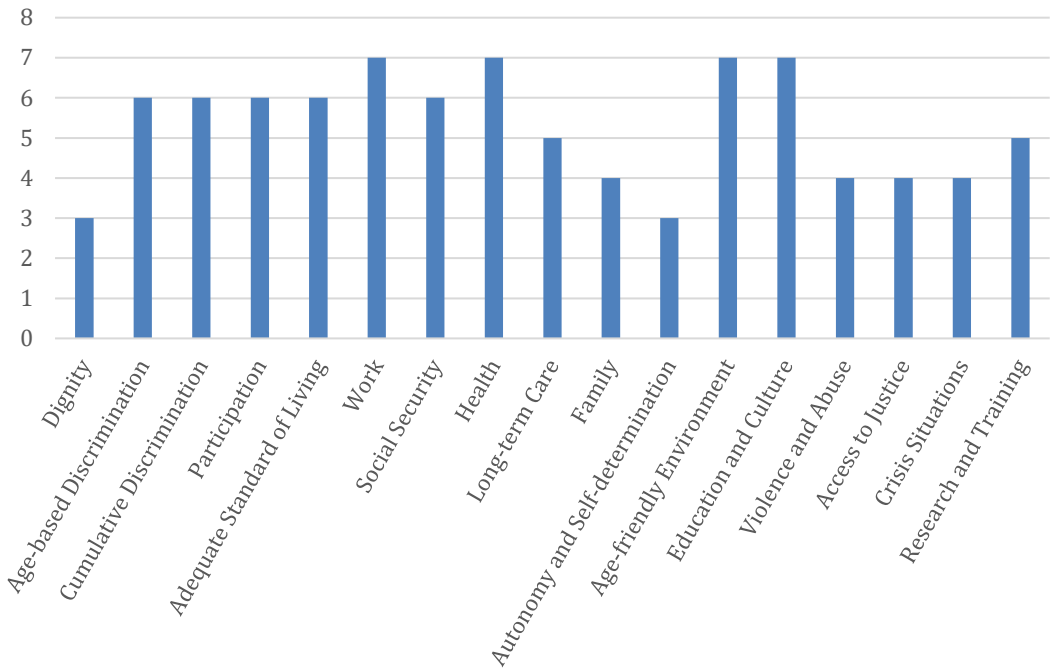

Figure 2: Number of mentions of categories

A preliminary question I encountered is whether a Convention on the Rights of Older Persons could provide not only a collection of rights, but – similarly to the ICRPD and ICRC – also a number of general principles for states to follow in the interpretation and application of older persons' rights. The ICRPD has enshrined a total of eight general principles in article 3 of the convention: dignity and autonomy, non-discrimination, participation, respect and acceptance, equal opportunities, accessibility, gender equality and respect for and rights of children with disabilities.[175] In the ICRC general principles are not explicitly mentioned as such, nevertheless the committee has identified four such principles relating to children: non-discrimination, the best interest of the child, the rights to life, survival and development and the respect for the views of the child.[176] Further, the ICRC articles are occasionally subsumed under "three Ps" which overarch rights of 'protection', 'provision' and 'participation'.[177]

[175] ICESCR, art.3.
[176] Brems, p.152.
[177] Eugeen Verhellen, 'The Convention on the Rights of the Child', *Routledge International Handbook of Children's Rights Studies*, Routledge, 2015, Available from https://www.routledgehandbooks.com/doi/10.4324/9781315769530.ch3 (accessed 1. August 2018), p.49.

For Older Persons the establishment of overarching principles and possibly also such a distinction of type of rights would certainly also make sense, which is why existing standards include something similar as well. The UN Principles for older persons for instance already proposes principles, structured as five sections with several sub-categories: independence, participation, care, self-fulfilment and dignity. I would argue that due to the high sociological impact and relevance given to the issue of 'ageism' it would be sensible to adopt 'non-discrimination' as a further principle following the example of the ICESCR and the ICRC.

5.1. Dignity

Although contained in most international human rights conventions, a definition of 'dignity' is not easy to deduce. It is mentioned as a recurring theme in many documents, demonstrating its importance in relation to many other rights and as a basic necessity for a fulfilled life. The UDHR first highlighted its importance in its first article which starts with the historic statement that "all human beings are born free and equal in dignity and rights".[178] This inherent endowment makes it a fundamental part of the human being, which is worthy of respect and protection.

For older persons dignity holds as much importance as for any other person. Due to ageist attitudes and practices however, it might be more easily infringed upon, especially wherever they find themselves in relationships of dependency. As one of the core values of international human rights law it has been reiterated several times[179] most frequently however in the ICRPD.[180]

The UN Principles for Older Persons also reiterates the inherent nature of dignity to any person and proclaims it as one of its five major principles to "live in dignity and security and be free of exploitation and physical or mental abuse".[181] The Inter-American Convention on Protecting the Rights of Older Persons recognises older persons' "right to live with dignity until the end of their life" which includes the right to appropriate end-of-life care for physical or mental

[178] UDHR, art.1.
[179] Patrick Capps, *Human Dignity n the Foundations of International Law*, Oxford, Hart Publishing, 2009, p.107.
[180] Degener, p.7f.
[181] UN Principles for Older Persons.

suffering.[182] The OEWGA considered the topic in relation to access to social services and resources to enable older persons to continue living a dignified life regardless of socio-economic status.[183]

In the ICRC, as mentioned above, dignity can be found as a guiding principle shaping the interpretation of the whole convention and is addressed several times in the preamble and the substantive articles.[184] In the preamble the focus is quite general, reaffirming "the inherent dignity and of the equal and inalienable rights of all members of the human family"[185] and the "faith in fundamental human rights and in the dignity and worth of the human person"[186] drawing from the pre-existing human rights framework. These declarations hold equal truth for older persons, the second one being especially important in that it confirms their inherent worth. Efforts to frame the value of older persons to society to encompass more than just their economic contributions have long accompanied the discourse surrounding the human rights framework relating to older persons.[187] Such a finance and work centred notion, though maybe not consciously adopted, supports negative bias that disregards the contributions of older persons to their families and communities in the form of caring for others, volunteer work and the transfer of knowledge and tradition among others.[188]

The preamble of the ICRC also includes a more targeted line saying that children should be "brought up … in the spirit of peace, dignity, tolerance, freedom, equality and solidarity".[189] While an early introduction to these values is already intrinsically beneficial for old(er) age, they deserve consideration in the current discourse as well. Incorporating the principles of dignity, equality and intergenerational solidarity as a general baseline for older persons' lives would certainly be beneficial in underpinning the importance of the value for the entirety of human rights of older persons.

[182] Inter-American Convention on protecting the Rights of Older Persons, art.6.
[183] OEWGA, 2012, p.10.
[184] Andrews, p.xii.
[185] ICRC, preamble.
[186] Ibid.
[187] MIPAA, para.21(g).
[188] FRA, 2018, p.10.
[189] ICRC, preamble.

Dignity is further brought up in relation with children with disabilities, education and recovery after experiencing violence, personally or in the context of crisis, and criminal justice. Relating to the latter the ICRC addresses dignity in the context of children in legal proceedings with a focus on "the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others"[190] as well as consequently on children deprived of liberty ant their right to be "treated with humanity and respect for the inherent dignity of the human person".[191] Due to its central character, a reiteration in different contexts can emphasise their importance which is why, similarly to other international conventions, it can be expected to be incorporated in several articles in a possible Convention on the Rights of Older Persons as well.

5.2. Age-based Discrimination

Age-based discrimination, or ageism, is the unequal treatment of persons due to their chronological or assumed age. The international 'group' specific conventions (ICERD, ICEAW, ICRPD) all provide a similar definition for discrimination with minimal differences. The ICRPD for example is describing it in its specific context as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".[192] The ICRPD even goes slightly further than the other conventions expanding the definition to also cover "all forms of discrimination, including denial of reasonable accommodation".[193]

Similarly, the Inter-American Convention on protecting the Human Rights of Older Persons defines 'age discrimination in old age' as "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

[190] Ibid., art.40(1).
[191] Ibid., art.37(c).
[192] ICRPD, art.2.
[193] Ibid.

fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life".[194]

The WHO has compiled an online list of Facts on Ageing and Health in which it among other things expresses its growing concern with the issue of ageism:

> Ageism – discrimination against a person on the basis of their age – has serious consequences for older people and societies at large. Ageism can take many forms, including prejudicial attitudes, discriminatory practices, or policies that perpetuate ageist beliefs. It can obstruct sound policy development, and it can significantly undermine the quality of health and social care that older people receive.[195]

In fact, ageist rhetoric can portray older persons as a "burden of society, unproductive, frail and incapable"[196] or a "drain on the economy"[197] which might reinforce exclusion, discrimination and marginalisation. The significant detrimental impact this has on all aspects of their life requires active countermeasures by states and the international community to shift public awareness and negative bias.[198] The problem doesn't exclusively lie in societal bias though – ageist attitudes can at times also be found in policy and legislation. Deficit centred policies for instance fail to take into consideration older persons contributions and can lead to ageist practices, discrimination, restrictive age limits and low policy attention.[199]

The issue of age discrimination has received more attention only rather recently – the ICESCR for example did not include age as a basis for discrimination because it had not been such a pressing issue at the time as the CESCR itself explained.[200] The absence of a clear denunciation of age-discrimination has arguably not only

[194] Inter-American Convention on protecting the Human Rights of Older Persons, art.2.
[195] WHO, *10 Facts on Ageing and Health*, 2017, http://www.who.int/features/factfiles/ageing/en/ (Accessed 9 June 2018), Fact 6.
[196] FRA, 2018, p.10.
[197] MIPAA, para.112.
[198] Judge, p.7.
[199] FRA, 2018, p.9.
[200] CESCR, 1995, para 11.

failed to advance the issue further up the list of priorities, but also masked discrimination faced by older persons.[201]

It is expected that with population compositions shifting, more people will face age discrimination in the future if negative bias is not counteracted.[202] Not only would this increasingly affect currently younger people in the form of stereotypes, it would also expose them to more substantive inequality as they age.

Ageism can further influence serf-perception of older persons themselves. When negative stereotypes become so deeply rooted into society they can become a self-fulfilling prophecy by evoking exactly the qualities described by these stereotypes.[203] Older persons might isolate themselves because they feel that society has no interest in them, which, in absence of an opportunity to participate, evokes an apathy that turns them into the images of old persons they feel they represent.

The ICRC protects children generally from "discrimination of any kind", also with a focus on their relation to third parties but refrains from including 'age' as an explicit ground for discrimination.[204] There is clearly an emphasis on guarding them from experiencing unequal treatment based on their parents' or family's status. However, seeing as 'age' is one of the central characteristics of its beneficiaries, it seems negligent for the convention not to specifically address it. Especially since restrictions could have easily been included by adding a provision that would acknowledge exceptions set down in national legislations or for reasons of the child's safety and well-being, similar to what has been used in other articles of the convention.[205]

In the case of older persons, addressing this gap will be a crucial step to protecting them from age-based discrimination. A Convention on the Rights of Older Persons could have a strong anti-ageist impact if given the right impetus[206] and a respective provision should therefor explicitly prohibit any discrimination on

[201] Judge, p.11.
[202] International Network for the Prevention of Elder Abuse et.al., p.3.
[203] WHO, 2015, p.11.
[204] ICRC, art.2.
[205] ICRC, art.9.; ibid., art.10; ibid, art.37.
[206] Doron, p.589.

the basis of age. In the case of the ICRPD for example, non-discrimination is mentioned in all of its substantive articles, most commonly with the phrasing 'on an equal basis with others'. That demonstrates how the emphasis is not on establishing new or different rights for persons with disabilities, but to ensure equal protection of their human rights[207] – an approach that could prove equally beneficial for older persons.

5.3. Cumulative Discrimination

When older persons are faced with additional forms of discrimination, their disadvantages might be aggravated even further.[208] The Inter-American Convention on protecting the Human Rights of Older Persons defined it as "any distinction, exclusion, or restriction towards an older person, based on two or more discrimination factors".[209] This cumulative discrimination bears relevance for example for older women, older persons with disabilities, older migrants, poor older persons, older persons living in rural areas etc. There are several other 'groups' that encounter such multiple discrimination like persons belonging to a minority, living in remote areas, growing up and living in low socio-economic environments among others, but they have received only little attention in the past.[210] In the ICRC "ethnic, religious or linguistic minorities or persons of indigenous origin"[211] are discussed in a community context, emphasising the importance of children growing up in their hereditary environment and related culture, religion or language. This argument is comparable to the recommendation of enabling older persons to live in their own communities for as long as possible (see chapter 5.5.).

As experiences for different 'groups' can vary considerably, and a comprehensive discussion would exceed the scope of this thesis I will shortly look into three of the most frequently discussed 'groups': women, persons with disabilities and migrants and refugees.

[207] Degener, p.15.
[208] FRA, 2018, p.9.
[209] Inter-American Convention on protecting the Rights of Older Persons, art.2.
[210] Herro, p.98.
[211] ICRC, art.30.

Document / Topic	Inter-American Convention	Protocol to the African Charter	CESCR general comment nr.6	Vienna Plan of Action on Ageing	Madrid Plan of Action on Ageing	UN Principles	OEWGA session reports
Gender	✓	✓	✓	✓	✓		✓
Disabilities	✓	✓			✓		✓
Migration	✓			✓	✓		✓

Table 3: Reasons for cumulative discrimination mentioned per document

Not all three reasons for discrimination have been addressed throughout documents relating to older persons. The UN Principles for Older Persons for example, which is the most concise of all texts, did not refer to any form of cumulative discrimination while the CESCR General Comment Nr. 6 addresses only the issue of gender. Other reasons for discrimination such as poverty and rural dwelling would fit under this topic as well and received moderate attention in this context but will not be discussed here but under other categories such as adequate standard of living (chapter 5.5.), health (chapter 5.8. and autonomy and self-determination (chapter 5.11.).

Document	Reasons for cumulative discrimination*
Inter-American Convention	Women, persons with disabilities, persons of different sexual orientations and gender identities, migrants, persons living in poverty or social exclusion, people of African descent, and persons pertaining to indigenous peoples, the homeless, people deprived pf their liberty, persons pertaining to traditional peoples, and persons who belong to ethnic, racial, national, linguistic, religious, and rural groups, among others[212]
Protocol to the African Charter	Older women[213], Older persons with disabilities[214]
CESCR General Comment nr.6	Older women[215]
Vienna Plan of Action on Ageing	Older women[216], rural areas[217], Migrant workers[218], Refugees[219]

[212] Inter-American Convention on protecting the Rights of Older Persons, art.5.
[213] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.9.
[214] Ibid., art.13.
[215] CESCR, 1995, para.20
[216] VIPAA, para.45, ibid., para.72; ibid., recommendation 27.
[217] VIPAA, para.39f.
[218] VIPAA, recommendation 42.

Madrid Plan of Action on Ageing	Older women[220] rural development, migration and urbanization[221], poverty[222], older persons and disabilities[223]
UN Principles	
OEWGA session reports	rural areas, racial discrimination and apartheid[224], older women, older migrants, older lesbian, gay, bisexual and transgender persons[225]

*multiple mentions are not reflected in this list

Table 4: Reasons for cumulative discrimination per document, all terms used per document

Looking at table 4 it becomes apparent that there is a multitude of possible reasons for older persons to experience cumulative discrimination. An in-depth consideration off all areas would neither make sense in the scope of this Master Thesis, nor in a possible Convention on the Rights of Older Persons. Imaginable could for example be an approach as it has for example been taken by the Inter-American Convention on protecting the Rights of Older Persons, which explicitly acknowledges the issue of cumulative discrimination[226], offers an open-ended list of possible factors[227] and addresses specific 'groups' where appropriate within the context of its provisions.[228] A more detailed consideration of some particular areas such as women and persons with disabilities might however also be beneficial.

5.3.1. Older Women

As women on average have a higher life expectancy, their share in the number of older persons tends to rise with old(er) age.[229] The combination of gender and old(er) age and its cumulative effects have been mentioned most frequently in the documents I analysed – the OEWGA for example mentioned it recurrently in the broader context of multiple discrimination but also in more specific terms such as

[219] VIPAA, recommendation 43.
[220] MIPAA, para.25.
[221] MIPAA, para.29ff.
[222] MIPAA, para.45ff.
[223] MIPAA, para.87ff.
[224] OEWGA, 2011, p.9.
[225] OEWGA, 2012, p.8.
[226] Inter-American Convention on protecting the Rights of Older Persons, art.2.
[227] Ibid., art.5.
[228] Ibid., art.9; Ibid., art.20; Ibid., art.24.
[229] FRA, 2018, p.14.

social security, work and long-term care.[230] While this acknowledges the needs of probably the largest portion of the 'group' of older persons, it has also been criticised that this strong focus overshadowed other forms of cumulative discrimination and identities.[231]

The CEDAW has already acknowledged age' to be a possible ground for cumulative discrimination for women in *General Recommendation No.25 on article 4, paragraph 1, of the Convention (temporary special measures*).[232] It further issued *General Recommendation No.27 on older women and protection of their human rights*.[233] While the contents of this document are tailored to address the experiences of older women by highlighting critical areas of concern, several more general observations relate to older persons in general, which is why I am referring to the document in a number of other topics as well. The recommendation recognises the heterogeneous character of women as a 'group' depending on a great variety of personal, societal and environmental aspects, as well as their vital roles in the private, public and economic sector.[234]

Though age discrimination hits older persons regardless of their gender, women are often affected in various specific forms. These stem from life-long inequalities and encompass stereotypes, access to services and resources as well as unequal opportunities[235], which is why the CEDAW too postulates the importance of adopting a life-cycle approach to human rights of older persons.[236] This requires issues to be identified early in life and continuously throughout the life course and to be addressed accordingly so as to limit the exacerbating effect thy can accumulate until old(er) age.

Due to lingering societal bias, traditional gender roles and lingering discriminatory laws and practices especially in developing countries, many women still face inequalities in education and employment. Overall, there are less women

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[230] Herro, p.96f.
[231] Ibid.
[232] Committee on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures)*, 2004, para.12.
[233] CEDAW, *General recommendation No. 27 on older women and protection of their human rights*, 16 December 2010, CEDAW/C/GC/27.
[234] CEDAW, 2010, para.8.
[235] Ibid., para.11.
[236] Ibid., para.15.

engaged in formal work than men, while at the same time earning less than their male peers.[237] Additionally, care responsibilities for children and other family members can lead to non-linear or interrupted career trajectories.[238] The impact that these disadvantages have on older persons is clear – they hinder them from saving up for retirement and are especially detrimental in contributory pension systems (see chapter 5.7.). In fact, women tend to receive on average 27% less pension than men as much of their contributory years are often invested in child-rearing and other care responsibilities.[239] That is part of the reason that women are more likely to be hit by poverty, especially in rural areas[240] where the number of women is particularly high[241], complicating mobility and access to resources and services of older women.[242] Other issues such as property and land ownership as well as inheritance, addressed for example by the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, can be restricted due to discriminatory traditions and laws.[243]

In the ICRC the issue of gender is not explicitly addressed, neither did the CRC issue any General Recommendations specific to girls. This lack of targeted examination fails to acknowledge the disadvantages of women all over the world. As inequalities can begin in childhood and accumulate during the life course, a comprehensive and sustainable guarantee of girls', women's and older women's human rights requires attention and should be targeted early on. Additionally, as cumulative discrimination experienced due to gender bears particular relevance for older women, it will have to be addressed in a possible Convention on the Rights of Older Persons.

[237] CEDAW, para.20.
[238] MIPAA, para.25.
[239] CESCR, 1995, para.20f.
[240] Judge, p.8.
[241] OECD, 2017, p.16.
[242] CEDAW, para.24.
[243] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.9(2); ibid., art.9(3).

5.3.2. Older Persons with Disabilities

The subject of older persons with disabilities is addressed quite consistently as well. No clear distinction is however made between persons who were born with an impairment or have had it for a longer period of time and those who developed it in old(er) age. Although this does not determine any level of severity or need for assistance, it can nevertheless influence the subjective experience.[244] Older persons who deal with newly emerging impairments might be faced with ageist stereotypes which portray their impairment as 'normal' for old(er) age, which in turn may hamper their equal access to diagnosis, treatment and rehabilitation. Although, the heightened susceptibility to disease and function loss does make older persons more prone to such conditions it would not be correct to automatically associate old(er) age with impairment and disability.[245]

Older persons with disabilities face a number of difficulties and barriers in all areas of their lives. Employing a social or rights model of disability (see chapter 4.2.) requires states to ensures that older persons can fully enjoy all human rights on an equal basis with others and irrespective of any impairment. To that end, the focus should be on guaranteeing self-determination in all matters concerning the individual and promoting active participation in society (see chapter 5.4.). Including also a consideration of additional forms of cumulative discrimination, particularly also a gender-perspective, would be necessary as well.[246]

The rights of children with disabilities are addressed comparatively broadly in the ICRC. The convention states that they "should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community".[247] The formulation of this paragraph may be transferable to old(er) age, but lacks the emphasis of equality with respect to others (as it can be found in the ICRPD).

The ICRC further provides three paragraphs on care and other services for children with disabilities. Besides formulating a right to "special care" to assist the

[244] Degener, p.9.
[245] FRA, 2018, p.14.
[246] CEDAW, 2010, para.16.
[247] ICRC, art.23(1).

child and persons caring for it, the convention also stipulates that it should be made available in form of a gratuitous service where needed.[248] Ensuring accessibility of support is meant to facilitate a child's access to "education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities"[249] – all requirements to promote autonomy and self-determination, participation and development. A last paragraph focuses on the need for international exchange efforts to further the development of prevention and treatment methods worldwide, especially in support of developing countries.[250]

The topic of a right to special care as it is set down in the ICRC, would be of relevance for older persons as well. In order to be able to continue living a dignified, autonomous and fulfilled life, despite any disease or impairment, they deserve suitable care, with the goal to mitigate or even eliminate limitations related to their condition. Globally the primary carers for older persons, including older persons with disabilities, are still family members. Without any external guidance or support however, it is questionable whether they are sufficiently equipped for providing appropriate care. In order to ensure high quality support, older persons and their families should have access to information, training, assistance as well as, where required, to assistive devices and support from professionals.[251]

A question would however be, if it should even primarily be the family's obligation to provide care in the case of a disability, or if this assumption doesn't rather create a situation of dependency on the side of the older person and an undue burden on the side of the family. In the ICRC the responsibility for the child lies with the parents or legal guardian[252], in old(er) age, this might not be the most beneficial approach.

On average, more women are affected by long-lasting impairments in old(er) age than men[253] also in the case of diseases like dementia.[254] While, as I delineated before (see chapter 5.3.1.), older women are already at a disadvantaged position,

[248] Ibid., art.23(2&3).
[249] Ibid., art.23(3).
[250] ICRC, art.23.
[251] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.13.
[252] ICRC, art.18.1.
[253] MIPAA, para.87.
[254] FRA, 2018, p.15.

the additional occurrence of disability can have particularly strong implications for them.[255] A gender perspective in relation to older persons with disabilities might therefore require additional attention as well.

Another question that arises is, whether a general subsumption under a provision on 'mental and physical disability' could be enough or if it could be beneficial to add an additional focus on mental impairments. The WHO estimates that approximately 5% of older persons worldwide are affected by various forms of dementia, especially in lower socio-economic environments, and that these numbers are expected to still rise considerably in the coming years.[256] Dementia has further been identified as having an influence on the experience of discrimination by older people[257] and on restricting their legal capacity.[258] While a broad approach might improve applicability, a specific mention of mental impairments would acknowledge the extent of the issue and the impact it has on older persons.

5.3.3. Older Migrants and Refugees

Migrants in general, but particularly also older migrants, especially in developing countries, are often affected by lower socio-economic standards and higher health risks[259] as well as various implications when it comes to employment.[260] Particularly in the case of migration into urban areas, older persons can commonly experience exclusion as they leave behind their community and support systems. This is especially relevant for older persons with a disease or disability in developing countries.[261]

An important issue, related to employment, is adequate access to social security services and benefits in the receiving as well as country of origin should they return.[262] This is for example also set down in the Inter-American Convention on protecting the Rights of Older Persons which urges states to "facilitate, through

[255] CEDAW, 2010, para.16.
[256] WHO, *Global action plan on the public health response to dementia 2017-2025*, 2017, Available from http://www.who.int/mental_health/neurology/dementia/action_plan_2017_2025/en/ (accessed 30 July 2018), p.2.
[257] OEWGA, 2011, p.11.
[258] FRA, 2018, p.15.
[259] Ibid., p.14.
[260] Ibid.
[261] MIPAA, para.31.
[262] VIPAA, recommendation 42.

institutional agreements, bilateral treaties, and other hemispherical mechanisms, the recognition of benefits, social security contributions, and pension entitlements for migrant older persons".[263]

The ICRC addresses the issue primarily in the context of migration relating to refugees. The focus is to provide accompanied and unaccompanied children who apply for or have received refugee status with the "appropriate protection and humanitarian assistance in the enjoyment of applicable rights".[264] The Article also stresses the importance of joint international multi-stakeholder efforts to facilitate family reunification.[265] It is further mentioned in relation to education, where the ICRC recognises the need to take into account the child's and its parents' history of migration and to foster respect for its own and other cultures.[266]

For the case of older refugees, the approach of the ICRC could provide a good baseline as far as protection and assistance as well as family reunification efforts is concerned. Older refugees or asylum-seekers may require special attention, specifically also regarding access to health care to ill or disabled persons and due to higher risk of experiencing discrimination and abuse and possibly post-traumatic stress syndrome.[267] The focus would however have to be expanded to also acknowledge the potential contributions older persons can offer for relief efforts and as transmitters of skills, knowledge and traditions to younger generations, especially in in cases of long-time displacement.[268]

5.4. Participation

Participation in society can be achieved in many different ways on an economic, political, community or family level and may be achieved to different extends. Arnstein's 'ladder of citizen participation' for example is a typology to grade participation according to the level of effective power individuals experience in the

[263] Inter-American Convention on protecting the Rights of Older Persons, art.17.
[264] ICRC, art.22(1).
[265] ICRC, art.22.
[266] ICRC, art.29.
[267] CEDAW, 2010, para.18.
[268] Ann Burton, 'Older refugees in humanitarian emergencies', *The Lancet*, vol.360, supp.1, 2002, p.47-48.

process (see figure 3).[269] At the bottom of his ladder he places 'non-participation', the symbolic pretend of involvement, that however intends to placate and manipulate disadvantages 'groups'. In the middle are various degrees of symbolic cooperation, that enable the involvement of citizens in discussions, for example also through representation by organisations, but do not ensure any effective influence. At the top Arnstein locates different levels of effective power to not only participate in, but shape relevant areas.[270] He emphasises that mere participation without holding the actual power to influence outcomes would ultimately be of no avail.[271]

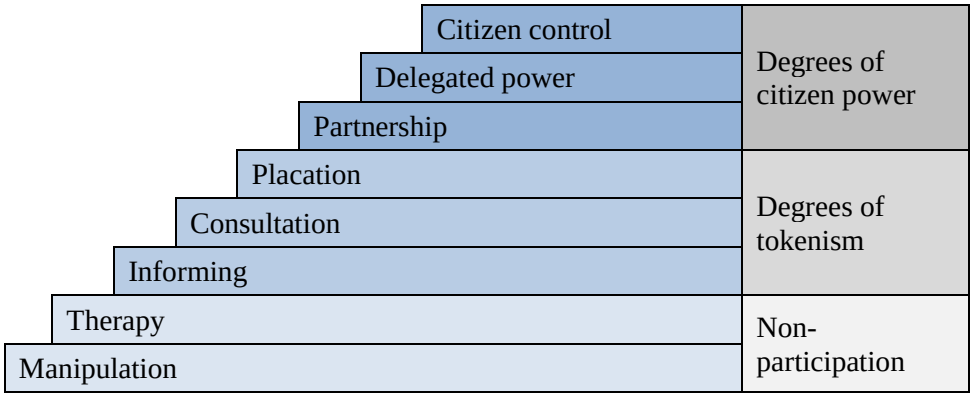

Figure 3: Arnstein's ladder of citizen participation[272]

This model explains that there is a difference between de-facto participation and involvement in policy making and other areas, proxy-participation with attention to the needs of a 'group' but without effective power to influence outcomes and pro-forma participation, without any real consequence.

The key to ensuring that older persons remain active and involved is to make sure that they are "valued independently of their economic contributions"[273] and to remove barriers that might hinder them from productively engaging with society. It is primarily necessary to make sure older persons are involved directly in any discussions or negotiations that might affect areas relevant to them to ensure the level of 'citizen power' needed to actually make an impact. That requires full and

[269] Sherry R. Arnstein, 'A Ladder of Citizen Participation', *Journal of the American Institute of Planners*, vol.35, no.4, p.216.
[270] Ibid., p.217.
[271] Ibid., p.216.
[272] Ibid., p.217.
[273] MIPAA, para.21(g).

effective political participation both to be able to vote and stand for office as well as to shape policy development. In order to ensure that this is universally possible, the electoral and participatory process itself needs to be appropriate - taking into account older persons' needs might require procedures to be simplified, facilities to be made more accessible and materials to be presented in a simpler way.[274] To facilitate participation and a collective claim of older persons to have the needs and preferences considered, states should encourage the establishment of appropriate organisations to collect and present common concerns.[275] This could include "community groups, organizations of older people and self-help groups" among others[276], which should nevertheless be centred around older persons themselves and should not be an excuse for preventing individual participation.

While some older persons might be restricted in their mobility or abilities and require support, this does not diminish the potential value they could add to society and most older persons are not only able but also eager to continue contributing.[277] Enabling them to do so would be crucial to preventing marginalisation in old(er) age.[278] Like with all other areas of concern, a gender-sensitive approach would need to be applied as well. As women are disproportionately affected by discriminatory practices and marginalisation, targeted countermeasures should be devised to guarantee their full participation in all areas of private and public life.[279]

The ICRC addresses issues relevant to participation in Articles 12-15 regarding children's right to forming and expressing their views and opinions and having them heard, freedom of thought and to participate through association.[280] These provisions have been seen as critical to the empowerment of children to active societal contributors and should equally be warranted in old(er) age.[281] They touch upon central areas of participation, that are in society, development and politics,

[274] Inter-American Convention on protecting the Rights of Older Persons, art.27.
[275] MIPAA, para.22.
[276] WHO, 2017, p.12.
[277] MIPAA, para.94.
[278] Mégret, p.60.
[279] CEDAW, 2010, para.29.
[280] ICRC, art. 12-15.
[281] Katie Richards-Schuster and Suzanne Pritzker, "Strengthening youth participation in civic engagement: Applying the Convention on the Rights of the Child to social work practice", *Children and Youth Services Review*, vol.57, 2015, p.90.

and demonstrate an age-inclusive approach to participation, taking into account also informal contributions[282] and intergenerational activities.[283] Consequently this could also include their partaking and consultation in matters of development and policy making so they can have a say in any formulation and enjoy the benefits.[284]

Participation is further mentioned in the ICRC in combination with other issues – the right of children with disabilities to enjoy active participation in the community"[285] as well as every child's right to participate fully in cultural and artistic life.[286]

Both provisions are relevant for old(er) age as well. The former would also have to be addressed in relation to older persons with disabilities in a possible Convention on the Rights of Older Persons. The latter has been included in other documents dealing with old(er) age such as the Inter-American Convention on protecting the Rights of Older Persons[287] and the VIPAA[288] but have been complemented to include them not only actively but passively. This would lead back to the issue of barriers which might restrict participation, for example in the context of accessing museum and cultural sites as well as touch on the question of preferential treatment e.g. through discounted tickets.

A different area that might be particularly interesting to look at in the current conceptualisation phase of a possible Convection on the Rights of Older Persons is in what way children were involved in the drafting process of the ICRC. While meanwhile the participation of children especially in the monitoring and reporting procedures are explicitly welcomed and encouraged, children had little to no direct involvement in the development of the ICRC. [289]

This stands in contrast to for example the development of the ICRPD where disabled persons were involved from the beginning and formed part of most if not all delegations.[290] But also in general, the ICRPD places a clear focus on ensuring

[282] MIPAA, para.19.
[283] Inter-American Convention on protecting the Rights of Older Persons, art.8.
[284] MIPAA, para.16.
[285] ICRC, art.23(1).
[286] ICRC, art.31.
[287] Inter-American Convention on protecting the Rights of Older Persons, art.21.
[288] VIPAA, para.76.
[289] Smiljana Simeunovic Frick, 'The Committee's View on Children's Participation in the CRC Monitoring and Reporting Process', *Revista de Asistenta Sociala*, vol.9, nr.2, 2012, p.34.
[290] Degener, p.16.

direct participation of persons with disabilities in all areas of life and society including politics and development.[291] This goes beyond a mere proxy-participation through organizations or spokespersons, but effectively puts the individual and its needs and preferences at the centre of the discourse. In an analogous manner, older persons should be consulted in the development process of policies that will have an impact on their lives not only on a national but more importantly also on an international level.[292] However, for a long time they have not been actively participating in the debates.[293] In relation to the MIPAA for example, states have proven to be rather negligent with encouraging the participation of older persons in any implementation efforts.[294]

Non-Governmental Organisations (NGOs) on the other hand have played a highly important role in the drafting process of the ICRC, a first time they had been involved so comprehensively, and have substantially influenced the discussions and the final document.[295] Similarly, the OEWGA has seen an active NGO participation in its sessions, which however is still only providing a form of proxy-participation if that doesn't involve older persons directly in discussions and ultimately the drafting process for a possible International Convention on the Rights of Older Persons.

5.5. Adequate Standard of Living

Adequate standard of living encompasses all essentials needed for a safe and dignified life. In UDHR article 25, which is also the only instance it specifically refers to 'old age', it is defined as "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".[296] In my analysis social security is a separate category and will be discussed further below (see chapter 5.7.). I will however add an issue to my considerations under adequate

[291] Degener, p.13.
[292] UN Principles or Older Persons, principle 7.
[293] Judge, p.7.
[294] International Network for the Prevention of Elder Abuse et.al., p.6.
[295] Gamze Erdem Türkelli and Wouter Vandenhole, 'The Convention on the Rights of the Child: Repertoires of NGO Participation', *Human Rights Law Review*, vol.12, nr.1, 2012, p.40.
[296] UDHR, art.25(1).

standard of living that is poverty, as it can impede the enjoyment of the aforementioned goods and services. The ICESCR frames the rights to an adequate standard of living in a fairly similar way but adds an additional emphasis on food security in relation to development of efficient and knowledge-based production methods, and the fair worldwide distribution of food.[297] CEDAW addressed especially the needs of older women in relation to housing and the state's obligation to facilitate independent living by removing any barriers and providing assistance.[298]

The ICRC explicitly identifies a right to a standard of living "adequate for the child's physical, mental, spiritual, moral and social development"[299] and lists "nutrition, clothing and housing"[300] as key components that would be required. These basic necessities are equally essential in old(er) age and therefore should be guaranteed under a possible Convention on the Rights of Older Persons as well.

The ICRC expands on the issue food, water and a clean environment in the context of health care[301], which is why, although they are necessary for an adequate standard of living as well, I will consider them under health (chapter 5.8.).

The right to clothing can be connected to other rights such as the right to life, as clothes protect us from environmental influences, the freedom of expression, exercised through the free choice of garment, non-discrimination based on (assumed) meaning of specific clothes, and dignity as well as freedom from abuse, which can be infringed upon by the prescription or denial of clothes. Older persons, especially when faced with other restricting factors such as poverty or disability can be particularly affected by the consequences of not being able to exercise their right to clothing.[302]

Housing is another crucial element of adequate standard of living with multiple relevance in old(er) age. With living arrangements shifting away from traditional

[297] ICESCR, art.11.2.
[298] CEDAW, 2010, para.48.
[299] ICRC, art.27(1).
[300] Ibid., art.27(3).
[301] ICRC, art.24(c).
[302] Stephen James, 'A Forgotten Right? The Right to Clothing in International Law', conference paper presented at The Sixteenth Annual Australian and New Zealand Society of International Law (ANZSIL), 2008, p.2.

multi-generational households, the number of older persons living in one or two-person households rises.[303] The impact on housing on the general quality of life has been shown to be significand regardless of age or place of residence.[304] For older persons, it means more than having a roof over one's head, but is a means for a continued independent life. Notably the ICRPD article 11 on an adequate standard of living has been argued to also encompass a right to independent living, reiterating the importance of autonomy and self-determination in this regard (see chapter 5.11.).[305] To ensure this is possible, there might be a need for adapting existing or developing new age-friendly residences and to create a suitable living environment that allows for older persons to remain in their own homes as long as possible.[306] This is especially relevant for people affected by poverty, who might be more prone to requiring adaptations in order to be able to retain their autonomy.[307]

The issue of poverty is not addressed in the ICRC. However, where people grow up and live their lives in poverty, they are unquestionably more at risk of being poor, and possible more highly dependent, in old(er) age.[308] The issue is closely interconnected with many other areas such as health, long-term care, abuse etc. and therefore requires a comprehensive approach over the course of the whole lifespan. Social policies to combat poverty in the overall population and possibly redistribution through appropriate pension policies could be tools to mitigate social inequalities in old(er) age.[309]

The financial situation of older persons in comparison to the overall population varies across the globe. While in the EU and Latin America the risk of poverty in old(er) age is on average lower[310], the opposite is the case for older persons living in sub-Saharan Africa for instance.[311] Economic trends and more varied employment situations, including more job changes an possible gaps during work

[303] Judge, p.7.
[304] VIPAA, para.64.
[305] Degener, p.6.
[306] CESCR, 1995, para.33.
[307] Sue Adams, 'No place like home? Housing inequality in later life', in M. Dean and P. Cann (ed.), *Unequal Ageing: The Untold Story of Exclusion in Old Age*. Bristol, Policy Press, 2009, p.78f.
[308] MIPAA, para.45.
[309] OECD, 2017, p.38.
[310] FRA, 2018, p.13.
[311] UN 2015, p.68.

life bear the risk of widening inequalities and producing more poverty.[312] There is further a tendency for a "feminization of poverty" linked to various lifelong inequalities in areas such as employment, access to property and capital, traditional practices etc.[313] Closely connected to poverty, the VIPAA addresses the topic of consumers and expresses its concern with targeted marketing towards older persons, especially in lower socio-economic situations, with the purpose or effect of exploiting lack of information or experience for profit.[314]

Notably, the ICRC emphasises that it is first and foremost the family's responsibility to provide especially the aforementioned material goods required for an adequate standard of living.[315] Should they not be financially or otherwise able to afford their children these basic requirements, the State may offer assistance.[316] In the case of older persons however, as discusses above, placing such a duty with family members could have adverse effects on the individual.

5.6. Work

This sub-chapter discusses the topic of work in the sense of remunerated economic activity. Owing to current demographic developments, the number of older persons, over 65 years of age, in relation to the total workforce is rising worldwide, most notably the developed countries.[317] This trend will have serious implications on social security and pension systems and will require a paradigm shift in the way older persons participation in the workforce is addressed.

The right to work historically played an important role in the human rights movement and has been addressed by several international documents, including in relation to old(er) age. The UDHR in article 23 sets down the "right to work, to free choice of employment, to just and favourable conditions of work" and further addresses entitlements to social security (see chapter 5.9.), fair and appropriate

[312] OECD, 2017, p.38f.
[313] MIPAA, para.46.
[314] VIPAA, recommendation 18.
[315] ICRC, art.27(2).
[316] Ibid., art.27(3).
[317] International Labour Organization (ILO), *World Employment and Social Outlook – Trends 2018*, 2018, p.45.

remuneration and to association in trade unions.[318] The Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Older Persons in Africa acknowledges that some older persons might experience conditions related to health and ability that warrant for the provision of “appropriate work opportunities” which take into account their specific situation.[319]

Work is also a very important topic in the ICRPD, which dedicates an extensive article to it. The focus lies on promoting equality in all areas of employment with the same opportunities and the rights to favourable working conditions as others while protecting them from discrimination and harassment.[320]

This is certainly an issue where the focus for children and older persons naturally diverges. The ICRC provides a number of protective provisions among which from ”economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development” and the implementation of national “minimum ages for admission to employment” and “regulation of the hours and conditions of employment”.[321]

This is not contrary but certainly creates a different emphasis compared to the ‘right to work’. The ICRC framework in relation to employment is necessary to avoid exploitation and to ensure that children can exercise their other rights. For older persons a protective focus might not be necessary in all aspects, but a consideration of the ICRCs approach to working conditions could yield helpful conclusions.

While age restrictions exist for both age ‘groups’, minimum ages for a child to be engaged in remunerating employment can hardly be paralleled to mandatory retirement ages.[322] The latter has been challenged repeatedly for example in the EU context with some litigations based on discrimination claims.[323] Older persons, regardless of their chronological age, should not be hindered from continuing to

[318] UDHR, art.23.
[319] Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Older Persons in Africa, art.6.
[320] ICRPD, art.27.1.
[321] ICRC, art.32.
[322] Judge, p.4; CESCR, 1995, para.12.
[323] Mégret, p.40.

work "for as long as they want and for as long as they are able to do so".[324] In the light of population ageing and the challenges this poses on pension systems and social structures, states are starting to encourage older persons to continue working longer, in an effort to harness their workforce and experience.[325] Flexible retirement schemes, fewer disincentives for staying economically active and discouragement from early retirement could potentially strengthen labour market participation and unburden pension systems.[326]

There are studies that show that the level of education correlates with how long a person decides to remain in the workforce showing that high-educated persons tend to continue working after reaching retirement age.[327] This would mean that a protection *from* work in childhood in order to support better schooling, could have a direct effect on the right *to* work in old(er) age. Further, better education can be related to better working conditions and fewer market inequalities, which in turn have a strong impact on poverty rates and quality of life for older persons.[328]

However, several other issues faced in employment that did not have any relevance in the ICRC would require attention as well. Most widespread is probably the impact of stereotypes in the workspace, putting older persons at a disadvantage vis-à-vis younger competitors and hampering their chances at finding, advancing in and retaining their jobs.[329] This issue is certainly connected to general societal bias, but also to education and training opportunities (see chapter 5.13). Enhancing equality in employment would have the potential of benefiting not only the individual, but also employers and ultimately society at large.[330]

The flip side of the right to work is the right to retire after a life of contribution. With more diverse patterns of employment and individual preferences among older persons, some people might decide to continue working beyond retirement age, for others this is less a question of choice but of necessity.[331] Lack of adequate pension coverage and the risk of poverty in old(er) age can prevent people, especially in

[324] MIPAA, para.23.
[325] ILO, p.45.
[326] MIPAA, para.28(h).
[327] OECD, 2017, p.16.
[328] ILO, p.50.
[329] CESCR, 1995, para.22.
[330] OECD, 2017, p.56.
[331] FRA, 2018, p.13.

developing countries, from retiring, which, depending on their area of employment and working conditions, can have an impact on health related issues.[332] Mechanisms to mitigate such inequalities such as adequate social security systems, particularly also non-contributory schemes are therefore crucial (see chapter 5.7).

The transition from work life to retirement can create an abrupt cut in a person's life, creating the need for measures to allow for a slow and progressive shift that has been recognised for example by the VIPAA[333] and the Inter-American Convention on protecting the Rights of Older Persons.[334] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa even speaks of preparing for the "challenges faced in old age, including retirement".[335] The CESCR similarly acknowledges that unpremeditated retirement can bear difficulties and advocates for information programmes on rights and duties as well as future possibilities for participation, education and leisure.[336]

5.7. Social Security

The right to social security is frequently identified as one of the areas that are most significant in old(er) age.[337] In the CESCR social security '"implicitly covers all the risks involved in the loss of means of subsidence for reasons beyond a person's control".[338] This includes due to "sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member".[339] This explicit mention in General Comment No. 19 of the CESCR on the right to social security highlights the importance of the issue for older persons, not only in relation to their age but also to their health and employment situation – both of which can in combination with each other and with further issues lead to aggravated circumstances. Due to different models of old-age insurance and pension schemes

[332] ILO, p.45.
[333] VIPAA, recommendation 40.
[334] Inter-American Convention on protecting the Rights of Older Persons, art.18.
[335] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.19.
[336] CESCR, 1995, para.24.
[337] Mégret, p.51f.
[338] CESCR, 1995, para.26.
[339] CESCR, *General Comment no.19. The right to social security (art.9)*, 23 November 2007, E/C.12/GC/19.

the implications for older persons after retirement vary considerably.[340] Financial circumstances in old(er) age depend on employment and income levels throughout the life course and the availability of contributory or non-contributory pensions. The ILO estimates that approximately 85% of the 15-65-year olds worldwide have a claim to some kind of pension[341] whereas the share is considerably lower in developing countries where it lies at under 20%.[342]

The right to social security has been addressed in all documents that have been subject to my analysis, except for the UN Principles for Older Persons. The UDHR also includes it in article 25 on adequate standard of living.[343] In Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa calls for "universal social protection mechanisms for income security" and recognises the need to facilitate procedures and accessibility for older persons.[344] The Inter-American Convention on protecting the Rights of Older Persons set it down as a requirement for being able to live a dignified life in old(er) age and addresses also the issue of coverage of older migrants. It further acknowledges that states might have to apply the principle of progressive realisation in order to fully cover the entire population.[345]

Article 26 of the ICRC sets down the right of children to social security and other benefits in accordance with the means available to the child and persons taking care of it.[346] The basis of this provision is in principle also applicable to old(er) age, though it would additionally need to encourage the implementation of non-contributory pensions and support to older persons to mitigate the effects of inequalities and prevent poverty.[347] This would especially be relevant considering a gender- and minority-perspective to ensure an adequate standard of living, regardless of economic contributions.[348] While a progressive realisation of this right

[340] CESCR, 1995, para.27; ibid., para.30.
[341] ILO, p.48f.
[342] Ibid., p.45.
[343] UDHR, art.25.
[344] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.7.
[345] Inter-American Convention on protecting the Rights of Older Persons, art.17.
[346] ICRC, art.26.
[347] Judge, p.8.
[348] OEWGA, 2012, p.11.

is needed to consider individual states' possibilities, the *European Report on Development 2010* demonstrates that implementing basic social security for all is feasible and affordable even in developing countries.[349]

5.8. Health

The WHO defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".[350] The right to health makes no difference concerning age, meaning that older persons have a right to its enjoyment on an equal basis with others, even though they might need additional supportive measures to be able to claim it.[351] While there is an individual responsibility to "maintain a healthy lifestyle", the state needs to create the right environment for people to be able continue an active and healthy life.[352] In this regard it has to make sure that any services or materials needed, are " available, accessible, affordable, acceptable and […] of good quality".[353] These are in principle the preconditions to effectively promote healthy ageing, defined by the WHO as "the process of developing and maintaining the functional ability that enables well-being in older age".[354]

Health in old(er) age is essentially linked to life-long health decision and access to adequate resources and health care from childhood on.[355] The effects of ageing per se are not inevitable and can be influenced by many different factors as becomes apparent in growing life expectancies worldwide.[356] Applying a life-course perspective to healthy ageing acknowledges that health in old(er) age may be influenced by "factors from early life, even in utero, and intergenerational factors" and encourages the research into possible medical and social causes and

[349] European Communities, *The 2010 European Report on Development, Social Protection for Inclusive Development*, San Domenico di Fiesole, European University Institute, 2010, p.50f.
[350] International Health Conference, *Constitution of the World Health Organization*, New York, 1964, p.1.
[351] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Thematic study on the realization of the right to health of older persons*, 4 July 2011, A/HRC/18/37, para.14.
[352] MIPAA, para.
[353] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.25.
[354] WHO, 2015, p.28.
[355] VIPAA, recommendation 14.
[356] Bond, p.37.

influences.[357] But healthy ageing does not only mean the absence of illness or impairment, it takes account the continuum of well-being and the individuals capacity to adapt to biological changes and outside influences.[358] This means that guaranteeing healthy ageing cannot start by addressing older persons alone but requires attention at all levels by encouraging prevention efforts[359] while providing equal and adequate access to health care, taking into account discriminatory and hindering factors such as gender, rural setting or poverty.[360]

As with social security (see chapter 5.7.), the UDHR includes health under article 25 on an adequate standard of living and doesn't expand on it further. ICESCR article 12 recognises the right to the „highest attainable standard of physical and mental health" and further requires states to ensure safe environmental factors, appropriate preventative and curative measures for widespread diseases and access to services.[361] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa set down no explicit right to health for older persons, but requires states to make sure older persons can "access health services that meet their specific needs...".[362]

The ICRPD proves a particularly helpful point of reference in relation to the topic of right to health. It has a clear focus on non-discrimination and equal access to health services as any other person, without laying down any additional requirements other than making adequate and specific health care for disabilities available, including prevention, diagnosis and treatment.[363] Prevention in that context is not framed in a way that promotes the general desirability of not having a disability, but rather as "secondary prevention" to limit the risk of acquiring additional impairments, which requires equal and effective access to health care facilities and services – the prevention of barriers so to say.[364]

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[357] Diana Kuh et.at., *A Life Course Approach to Healthy Ageing*, Oxford, Oxford University Publishing, 2013, p.5.
[358] Ibid., p.6.
[359] CESCR, 1995, para.35.
[360] Degener, p.13.
[361] ICESCR, art.12.
[362] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.15.
[363] ICRPD, art.25.
[364] Degener, p.12.

Indiscriminate access to health care is equally important for older persons. It is a major issue with advancing age, particularly for older persons over 80-years old, as they are especially susceptible to chronic diseases or even long-lasting impairments.[365] Globally, disability is most commonly caused by mental health problems, which in particular require early preventive and curative measures, to ensure a dignified life, preferably without resorting to institutionalised care.[366] Individual health status is of course subject to strong variations related to socio-economic status and geographical location and is commonly influenced by additional worsening factors such as overweight or smoking.[367]

Older persons may face a number of barriers that prevent them from accessing essential health care. These can be financial barriers, lack of mobility, overburdening of the system but also individual problems such as communication or time restraint.[368] Especially in relation to log-term care (see chapter 5.9.) cost related barriers can be problematic.[369] Ageist attitudes my further hamper access to surgery or rehabilitation due to preferential treatment of younger patients, who might be seen as more deserving.[370]

The ICRC also reiterates the right to the "enjoyment of the highest attainable standard of health" and access to treatment and rehabilitation in case of sickness.[371] Paragraph 2 of Article 24 then specifies which areas require particular attention, some of which undoubtedly bear relevance for older persons as well, excluding subparagraph (a) on child mortality.

Not only does the ICRC require States to provide health care, it also emphasises the importance of making it better accessible through the expansion of primary health care facilities.[372] Older persons, especially those living in remote or rural areas, may have difficulties reaching a doctor or the nearest hospital due to declining personal mobility and inadequately adapted transportation networks. As

[365] OECD, 2017, p.44.
[366] MIPAA, para.84.
[367] Ibid.
[368] OECD, 2017, p.42.
[369] FRA, 2018, p.13.
[370] MIPAA, para.70.
[371] ICRC, art.24(1).
[372] ICRC, art.24.2(b).

the risk of health issues and therefore the frequency of "necessary medical assistance" as described in the ICRC generally tends to increase with age, the development of primary health care will be of vital importance to ensure accessibility for older persons. Access should also be made widely available to assistive devices and interventions where needed. Even simple interventions or adaptations can make a significant difference for personal autonomy and self-determination.[373]

In the same article the ICRC addresses basic prerequisites for health, such as safe nutrition and drinking water, as well as a non-hazardous environment as well.[374] Access to food and water may be particularly difficult for persons of lower socio-economic status or living in rural areas where access or distribution may be restricted, or for people with reduced mobility. It can further be impacted by individual problems such as a generally unhealthy diet or dental problems.[375] Poverty reduction among older persons would be helpful in positively influencing the above-mentioned factors and ultimately the overall health and well-being.[376]

Finally, the ICRC emphasises the need for information and education of children and their parents or other caregivers on matters concerning their health, hygiene, accidents and prevention.[377] These provisions are highly relevant for the context of old(er) age as well since problems arising with age are in many cases preventable with the right conditions and prevention mechanisms.[378] Further, providing guidance for older persons and family members could significantly improve their ability to cope with emerging health issues and prevent such issues from negatively impacting quality of life.

[373] WHO, 2017, p.15.
[374] ICRC, art.24.2(c).
[375] VIPAA, para.63.
[376] MIPAA, para.64.
[377] Ibid., art.24.2(e); ibid., art.24.2(f).
[378] WHO, 2017, p.15.

5.9. Long term Care

The WHO associates long-term care very closely to active ageing. It defines it as "the activities undertaken by others to ensure that people with or at risk of a significant ongoing loss of intrinsic capacity can maintain a level of functional ability consistent with their basic rights, fundamental freedoms and human dignity", which is meant to allow older persons to age healthily irrespective of their impairments.[379] The FRA similarly acknowledges the function of care to maximise older persons' ability in order to continue living a dignified life.[380]

Generally speaking, long-term care can be administered either at home or in residential care homes. While home care often implies informal care by family members, it rather means support by professionals at home. In institutional care, older persons receive more organised assistance and care in live-in facilities.[381] Enabling older persons to remain at home as long as possible while having access to support in their familial setting certainly allows for more autonomy and self-determination.[382]

In many parts of the world it is still the primary responsibility of family members and the community to look after older members.[383] The effects of informal care does not only impact older persons, who might not receive the professional attention required, but also the carers, predominantly women, who might be affected in their ability to work but also be impacted in their personal health and well-being.[384] But as traditional family structures undergo changes, older persons need to have access to professional care in a suitable and affordable way.[385]

The ICRPD in this context addresses the need for "support services, including personal assistance" to avoid isolation and maximise independence and participation.[386] In contrast to older models of welfare and care, including the provision of guardianship, this assistive approach is one of empowerment and self-

[379] WHO, 2015, p.18.
[380] WHO, 2017, p.17.
[381] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.45.
[382] Ibid., para.46.
[383] WHO, 2017, p.19.
[384] OECD, 2017, p.46.
[385] VIPAA, 1983, para.35
[386] ICRPD, art.19(b).

determination.[387] It is closely linked to independent living in a familial environment, and strives to sustain independence regardless of impairment.[388] These provisions are highly relevant to older persons as well, who with the onset of function loss may be at risk of having their autonomy restricted through care arrangements that don't fully respect their right to self-determination (see also chapters 5.5. and 5.12.).

Another aspect considered for example in the Africa context is the role of older persons as carers, particularly for "orphans and vulnerable children" as well as persons affected by HIV/AIDS, who might require financial and other assistance to be able to provide care.[389] The MIPAA also acknowledges this issue with a particular view to the un-proportional burden on older women and the role of grandparents.[390]

Before looking at how the ICRC deals with this topic in particular, it is crucial to remember, that comparisons between childhood and old(er) age should not be drawn carelessly as it bears the risk of simplification. The dependency of a child from its parents can't be paralleled to that of older persons in need of care as it would be neglecting their right to autonomy and self-determination. In any long-term care arrangement, the goal should be to preserve the persons autonomy and adhere to their wishes as closely as possible. Dependency is an issue that has increasing relevance with the progressing of biological ageing, most notably in connection with poverty.[391] Measures to reduce older persons' need to rely on outside assistance are required to ensure a life in dignity and self-determination. Older persons should have the freedom to decide on their preferred care arrangement, request or decline procedures and have access to palliative care.

The issue of care is explicitly addressed in the ICRC only shortly and relating to responsibilities of the state. Article 25 sets down the obligation to monitor facilities where children are taken care of, including any medical treatment they may

[387] Degener, p.5.
[388] Ibid., p.6.
[389] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, preamble; ibid., art.12.
[390] MIPAA, para.106.
[391] OECD, 2017, p.45.

receive.[392] However, 'long-term care' in the context of children could also be interpreted as care in the sense of 'upbringing', which would allow considering some further provisions.

Article 18 assigns both parents the same obligation to take care of a child. While the primary responsibility for this is unmistakably placed on the parents, the state is required to offer assistance when needed and provide any facilities or services that could be required.[393] Article 20 addresses the case in which the child cannot remain with its family. Only in such circumstances does the convention require the state to take over responsibility by finding an alternative placement.[394] The issue of adoption is considered in article 21 which primarily focuses is to find a suitable new placing for the child.[395]

Whether the family should be primarily responsible for providing care in the context of old(er) age is questionable. There is no international unanimity on which system would be preferable: traditional systems or a focus on state supported professional care. The MIPAA for example rather recommends care by trained personnel to ensure adequate assistance, affording the family only a complementary status.[396] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa on the other hand clearly encourages strengthening more traditional systems of family and community care while providing the option of institutional care if needed.[397]

Whichever system is given priority, family members of older persons in need of care still might require some form of assistance. Information on possible options while emphasising the rights and needs of older persons could ensure that older persons can give their informed consent to any care decision and prevent unnecessary or forced institutionalisation.[398]

Palliative care, special care for gravely or terminally ill patients and their families with the goal to alleviate suffering and improve quality of life, can be of

[392] ICRC, art.25.
[393] Ibid., art.18.
[394] Ibid., art.20.
[395] Ibid., art.21.
[396] MIPAA, para.102.
[397] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.11.
[398] Inter-American Convention on protecting the Rights of Older Persons, art.12.

increasing importance for older persons as they age.[399] It encompasses prevention, early diagnosis and treatment not only of physical pain, but also regarding the whole spectrum of their "physical, psychosocial and spiritual" needs[400] including support in dealing with fear of death and pain associated with disease.[401] Comprehensive support would also have to encompass assistance and coping strategies for relatives during and after the illness.[402]

5.10. Family

The family is "recognised as the fundamental unit of society" notwithstanding any fluctuations it is undergoing – multi-generational families, smaller nuclear families, changes in women's role in society and their families etc.[403] With that, the role of older persons is influenced as well. With longer working lives, grandparents might not be available for child care as early, yet possibly longer due to longer life spans; they may not live with their families, but might be able to rely more on support from outside the family. The topic has some overlap with long-term care, which is why this chapter will avoid a detailed analysis in that context (for more see chapter 5.9.).

In the ICRPD family is addressed on several levels that might be relevant for older persons as well. It does so in the context of supporting families in assisting family members with disabilities[404], prohibits intrusions into the private and family life[405] and enshrines the "respect for home and the family" in a separate article, where it sets down the right to start a family and have children.[406] Importantly however, the individual should always be able to ultimately exercise his right to self-determination[407], regardless of family relationships – a principle relevant for older persons as well.

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[399] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.54.
[400] WHO, *WHO Definition of Palliative Care*, 2010, available from www.who.int/cancer/palliative/definition/en/ (accessed 29 July 2018).
[401] Inter-American Convention on protecting the Human Rights of Older Persons, art.6.
[402] VIPAA, recommendation 5.
[403] Ibid., para.66.
[404] ICRPD, preamble(x).
[405] Ibid., art.22.1.
[406] Ibid., art.23.
[407] Ibid., art.19.

Family is given a high priority already in the preamble of the ICRC, that states that it is "the fundamental group of society and the natural environment for the growth and well-being of all its members" further adding that it is the most beneficial environment for a child to grow up in.[408] Article 5, similarly to article 18 (see chapter 5.9.), expands on this and recognises the role of various family members, guardians and the community in the upbringing of the child.[409]

Though it might not be favourable for older persons to exclusively rely on the family in all aspects, such as in medical and care questions, it seems reasonable to believe that they too would enjoy in their later years "an atmosphere of happiness, love and understanding" as postulated in the ICRC.[410] Families can both be a resource in old(er) age as well as the beneficiary of assistance. They can benefit from grandparents and older members for intergenerational support with childrearing responsibilities or through financial contributions, while older members can continue to participate and contribute. Social services can back these efforts by providing information, guidance and resources to address possible needs and issues.[411] Raising awareness, specifically also in a targeted way towards families, about the rights of older persons and ways to respect and uphold their dignity would be important to eliminate stereotypes and highlight important contributions older persons can make for their families.

An issue not addressed by the ICRC is the right to marry and found a family including to have children, possibly also through adoption where it doesn't interfere with the best interest of the child. Furthermore, a provision, similar to one found in the ICRPD, which protects older persons from "concealment, abandonment, neglect and segregation" within the family in case of heightened dependency would also be highly relevant for old(er) age.[412]

[408] ICRC, preamble.
[409] Ibid., art.5.
[410] Ibid., preamble.
[411] CESCR, 1995, para.31.
[412] ICRPD, art.23.3.

5.11. Autonomy and Self-determination

Autonomy and self-determination are crucial for older persons as they can have a strong impact on many aspects of their life, their dignity, individuality and overall well-being.[413] Apart from a person's individual capacity, they also depend on many outside influences, their environment and the existence of barriers, the availability of family and community support as well as financial resources.[414]

Individual capacity encompasses any health or functional factors, which might be restricted where older persons encounter barriers. With the right conditions however – appropriate support and a barrier free environment – the effects of personal restrictions can be mitigated. The environment and opportunities are strongly influenced by the status of old(er) age in society and policies addressing older persons needs and preferences and protecting their rights and freedoms.

A solution to the problem of barriers has been proposed with the idea of universal design, defined in the ICRPD as "design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design".[415] This inclusive approach does not focus on any particular 'group' of people but aims at facilitating access in a universal way for the benefit of everyone.

The ICRPD generally puts a high emphasis on the importance of autonomy and self-determination. In article 19 it emphasises the benefits of "living independently and being included in the community", which includes to freely choose their home and who to live with, access to personal assistance to support independent living and access to "community services and facilities".[416] The provision however is not limited to these areas and requires "all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives".[417] In fact, independent and community living are preconditioned on the convention's

[413] WHO, 2017, p.11.
[414] Ibid., 2017, p.11.
[415] ICRPD, art.2.
[416] Ibid., art.19.
[417] CRPD, *General Comment No.5 (2017) on living independently and being included in the community*, 27 October 2017, CRPD/C/GC/5, para.16.

general principles of "dignity, autonomy and independence" as well as "full and effective participation and inclusion in society".[418]

Autonomy and self-determination would further require provisions to ensure older persons can exercise their right to give their informed consent to any medical or other decision directly impacting their well-being.[419] Personal resources, such as contacts to family and friends as well as integration in the community can reduce the risk of isolation and marginalisation and offers contact points in case of need. Financial resources lastly make a difference in access to services and goods, that support a more independent life.

Reiterating the importance this topic has on older persons, references can be found in several documents relating to older persons. The Inter-American Convention on protecting the Rights of Older Persons recognises the importance of older persons' freedom to make decisions concerning life plans, housing, services and health issues to be able to "lead autonomous and independent lives"[420] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa addresses not only personal decision-making of older persons but also the issue of assisted decision-making and the right to assign a third party the authority to carry out their wishes on their behalf.[421]

The MIPAA recognises and formulates recommendations for action relating to some 'groups' with a higher risk of not being able to fully exercise their right to autonomy such as older migrants particularly in urban settings[422] and older persons living in rural areas.[423] CEDAW particularly addresses inheritance and property rights, that, if not equally accessible, can restrict older women's autonomy.[424]

Autonomy of the child is not addressed specifically in the ICRC. This is not surprising, as children are generally considered in a context of dependency on third parties such as their parents or a legal guardian due to their "physical and mental

[418] Ibid., para.3.
[419] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.61.
[420] Inter-American Convention on protecting the Rights of Older Persons, art.7; ibid., art.11.
[421] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.5.
[422] MIPAA, para.34.
[423] Ibid., para.33.
[424] CEDAW, 2010, para.52.

immaturity" as laid down in the UN Declaration of the Rights of the Child, and reiterated in the ICRC.[425] There is however a distinction made by the CRC between children and adolescents, who are gradually attributed an entitlement to higher autonomy.[426] With that, the Committee recognises their "right to exercise increasing levels of responsibility" and the duty of parents or legal guardians to adapt to and encourage this process.[427]

In the context of old(er) age, *rising* levels of dependency, stemming from the existence of various forms of barriers, can be the cause for loss of autonomy and self-determination. It is however important to keep in mind, that function loss or impairment do not per se make a person less autonomous. An approach as the one described in the context of children would therefore not be appropriate for older persons. As the CRC requires in General Comment Nr. 20, the key is to navigate the fine line between the right to autonomy and the protection from risks or exploitation.[428] By providing older persons with targeted assistance, infrastructure and resources while eliminating structural, physical and legal barriers can allow older persons to retain their independence regardless of their age. Making sure that particularly older women, migrants and persons living in rural areas, who might not have full agency over some aspects of their lives[429], are granted the same opportunities and rights and are empowered to make use of their right to autonomy would mitigate the effects of cumulative discrimination (see chapter 5.3.).

5.12. Age-friendly environment

An age-friendly environment would ideally take into account all needs and preferences of persons of different ages so as to make all aspects of private and public life accessible to them. The topic encompasses areas such as infrastructure, transportation, supply of services and environmental factors and is equally relevant to children as it is to older persons.

[425] Declaration of the Rights of the Child (adopted 20 November 1959), preamble.
[426] CRC, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, para.9.
[427] Ibid., para.18f.
[428] Ibid. para.20.
[429] WHO, 2017, p.11; MIPAA, para.109.

Universal design (see chapter 5.11.) is particularly relevant in the development of facilities, services and housing opportunities. In the Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Older Persons in Africa “access to infrastructure, including buildings”[430] is mentioned in this regard. The Inter-American Convention on protecting the Rights of Older Persons confirms the importance of an accessible environment more specifically also to include the “physical, social, economic and cultural environment”, which underscores the importance of physical accessibility for the enjoyment of several other rights.[431]

As for age-friendly housing opportunities the Inter-American Convention on protecting the Rights of Older Persons relates it to the needs of older person with some form of impairment and calls for the provision of special houses and homes, architecturally designed in a way that would take into account loss of function and mobility.[432] Not only rebuilding is proposed as a possible measure, the VIPAA also recommends making modifications to existing residences to adapt to the possibilities of older persons instead of the other way around.[433] One possible need to be taken into account could for example be the heightened risk of falls in old(er) age, which are a serious threat to older persons’ life and health.[434] Falls have been identified to be closely linked to housing conditions, and could thus in part potentially be prevented through some age-sensitive adaptations.[435] As described in chapter 5.9., enabling older persons to remain in their own homes as long as possible, can significantly improve their sense auf autonomy and avoid the negative impacts of institutionalisation such as isolation.

Another critical aspect is infrastructure. Older persons should have access to adequate transportation, especially also in rural areas to facilitate mobility and the effective use of services and facilities.[436] Public transport is necessary to ensure that older persons with reduced mobility can enjoy their rights by for example being able to reach a doctor, hospital or social services as well as take part in the social

[430] Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Older Persons in Africa, art.18.
[431] Inter-American Convention on protecting the Rights of Older Persons, art.26.
[432] Ibid., art.24(a).
[433] VIPAA, recommendation 19 (a)
[434] Adams, p.90.
[435] Ibid. p.90.
[436] VIPAA, recommendation 22.

and cultural life.[437] To accord for reduced function and possibly disability older persons may require adequately designed means of transport, priority seating and possibly preferential fees.[438]

The ICRC addresses for instance the topic of access to information and the role of the mass media. It has some different foci on the one hand on making "information and material of social and cultural benefit to the child"[439] available including through international exchange. On the other hand, it calls for the production of specific child-friendly material in the form of children's books[440] and urges the mass media to facilitate access to information by taking into account minority languages.[441] It finally also takes a protective stance by proposing the adoption of measures that would prevent children from being exposed to information that could be detrimental to their well-being.[442]

For older persons access to information not only has an educational or recreational character, it also determines how well they can interact with their environment. Enabling older persons to make the right decision for themselves requires an effective and tailored sharing of information. Taking into account the individual's capabilities is essential in how the information is conveyed – for example if communication or concentration is impaired due to dementia or other conditions. While this would be relevant also in the context of children it has not been addressed by the ICRC.

The other issues grouped under age-friendly environment (transportation and the design of services and facilities etc.), that have been addressed by the analysed documents relating to older persons have not found specific mention in the ICRC either, although these areas would bear relevance for children as well.

A more age-friendly environment would greatly benefit children and older persons alike and allow them to live a more independent life. Many aspects of a universal design could eliminate barriers, for example high step stairs or heavy

[437] CEDAW, 2010, para.24.
[438] Inter-American Convention on protecting the Rights of Older Persons, art.26.
[439] ICRC, art.17(a)&(b).
[440] Ibid., art.17(c).
[441] Ibid., art.17(d).
[442] Ibid., art.17(e).

doors, that could hamper easy access to facilities. A safe neighbourhood and measures to avoid risks related to traffic are similarly important to both 'groups'.[443] In order to adequately identify the needs and preferences of all concerned parties it would however be necessary to consult them in the development of services and facilities.[444]

Lastly, it might be sensible to consider the principle of the best interest of the child, as set own in article 3[445] and being given a vital priority in the overall interpretation of the convention also with regard to its implementation in the context of the topic of age-friendly environment. The principle requires all decisions, which directly or indirectly impact children to be guided by the child's best interest and to be considered in the general framework of norms, guidelines and institutions, that assure age-appropriate care.[446] It similarly calls for the instalment of services and facilities specifically tailored to the needs of children including to assist working parents.[447] Similarly any policy or action directly influencing aspects of older persons lives should be guided by their needs and preference, which can best be established by involving them in the development process.

5.13. Education and Culture

The topics of education and culture have been subsumed under one category seeing as in most cases the documents, notably only the international texts, relating to older persons considered in this analysis have done so in their texts. CESCR General Comment No. 6[448], the VIPAA[449] and the UN Principles for Older Persons[450] specifically addressed the topics in a common section. The regional standards have separated education[451] and culture[452] in two consecutive articles.

[443] VIPAA, recommendation 19(d).
[444] WHO, 2017, p.14.
[445] ICRC, art.3.
[446] CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1)*, 29 May 2013, CRC/C/GC/14, p.3.
[447] ICRC, art.18.
[448] CESCR, 1995, para.36ff.
[449] VIPAA, para.74ff.
[450] UN Principles for Older Persons, para.16.
[451] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.16; Inter-American Convention on protecting the Rights of Older Persons, art.20.

Only education could be found in the MIPAA[453] and OEWGA reports in relation to other topics[454] or separately.[455]

Education is a strong influencing factor on many areas of our lives which is why the United Nations Educational, Scientific and Cultural Organization (UNESCO) uses the concept of lifelong learning as an umbrella term for all forms of formal and informal education that allow adults and older persons to improve their economic, social and personal prospects.[456] The concept also plays a role in relation to persons with disabilities and is set down in the ICRPD in article 24 on education. It is mentioned alongside "tertiary education, vocational training, adult education" and the requirement for "reasonable accommodation" to ensure equal access.[457] It requires states to ensure equal access to all levels of education in both the private and public sector.[458]

The MIPAA further reiterates, that as members of a "knowledge based society" older person are entitled to education on an equal basis with others.[459] It has been shown that better education could even correlate with reaching higher ages.[460] However, especially in developing countries, many older persons have not even had access to basic education and are barely able to write and count, impeding their chances of finding decent employment and maintaining an adequate standard of health.[461] But also in developed countries, older persons encounter gaps in their educations, most notably in relation digital and information technology skills, which can hinder their effective exchange with their environment and evoke feelings of estrangement.[462] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa has therefore introduced a

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[452] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.17.; Inter-American Convention on protecting the Rights of Older Persons, art.21.
[453] MIPAA, para.35ff.
[454] OEWGA, 2011, p.10; OEWGA, 2013, p.13.
[455] OEWGA, 2016, p.10.
[456] UN Educational, Scientific and Cultural Organization (UNESCO), *Recommendation on adult learning and education*, 13 November 2015, art.1.1.
[457] ICRPD, art.24.5.
[458] CRPD, *General comment No. 4 (2016) on the right to inclusive education*, 25 November 2016, CRPD/C/GC/4, para.24.
[459] MIPAA, para.35.
[460] OECD, 2017, p.22f.
[461] MIPAA, para.36.
[462] Ibid., para.38.

separate provision encouraging appropriate training for older persons – the only reference the Protocol makes in relation to education.[463]

Education plays an important role in relation to employment. With the rapid development of technologies and people undergoing more job changes in the course of their careers they need to be better equipped to adapt to shifting demands and job requirements. Therefore, continuous efforts should be made to provide the same access to training to older persons to allow them to maintain their employability and competitiveness and avoid inequalities in later life.[464] Investing in different skill sets, beyond routine or manual tasks, would give older workers more employment opportunities and could increase overall participation.[465] Adapting older persons capabilities to the shifting requirements of the labour market through life-long learning can reduce the rate of early retirement and consequently unburden the pension system.[466]

Special attention should be given to disadvantaged 'groups' such as women, persons with disabilities and persons living in rural areas whose access to education might be restricted, as it subsequently also impacts their enjoyment of a range of other rights.[467] With a disproportionate number of women, especially in developing countries, bearing the primary childrearing or other care responsibilities, targeted information on these issues would not only be beneficial to the women themselves, but to the well-being of their families.[468]

The topic of education is not unexpectedly dealt with quite in depth in the ICRC. It addresses all stages of education with the requirement of equal access and opportunity for all children based on a progressive realisation on all levels. Regarding primary education, the convention urges states to provide free and compulsory basic schooling to all children. Secondary education is already addressed with less urgency but still with a view to providing a wide variety of option with access for all and financial support for disadvantaged children. Access

[463] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.16.
[464] OECD, 2017, p. 54.
[465] Ibid., 2017, p. 55.
[466] ILO, 2018, p.50.
[467] CEDAW, 2010, para.19.
[468] Ibid., para.40.

to tertiary education is also required but, in contrast to lower education, "on the basis of capacity".[469]

These provisions could certainly have indirect implication for old(er) age as higher levels of education could positively impact the overall quality of life also for the ageing population. But also directly older persons should have access to all stages of education including "literacy, post-literacy, technical and professional training".[470]

The proposed efforts in the ICRC towards the eradication of "ignorance and illiteracy throughout the world" through international cooperation would certainly be crucial for older persons as well.[471] Ensuring that older persons receive at least the most basic education and skills could support them in living a more autonomous and independent life. Further, tertiary education, which is one of the few areas in which age-discrimination is still more widely accepted[472], could hold direct benefits for older persons in strengthening their competitive capabilities, supporting life-long learning, and promoting self-actualisation.

An additional take on issues relating to education can be found in ICRC article 29 dealing delineating the overall goals of child education. Apart from personal gains such as their "development of […] personality, talents and mental and physical abilities" it emphasises the importance of transmitting common values through education. The "respect for human rights and fundamental freedoms" is named, just like traditional and national values and the "preparation of the child for a responsible life in a free society".[473] Arguably, this provision holds less relevance for older persons, for whom education might have less of a developmental focus than of acquiring skills and knowledge for practical application. Nevertheless, older persons may equally find individual fulfilment in education, and should have the possibility to develop their personal skills and be encouraged to adopt an attitude of respect for human rights.

[469] ICRC, srt.28.1.
[470] Inter-American Convention on protecting the Rights of Older Persons, art.20.
[471] ICRC, art.28.3.
[472] CESCR, 1995, para.12.
[473] ICRC, art.29.

Education, particularly when targeted exclusively at older persons, might need to be adapted so as to consider individual abilities and requirements.[474] Information and material, printed or digital, should take into account different levels of visual and auditory as well as motor functions to allow full usability.[475] Similarly, in the ICRPD, providing educations through appropriate channels that take into account individual impairment through among others sign language, braille material etc, is promoted to ensure ideal conditions for learning on an equal basis with others.[476] Certificates and other written qualifications to prove older persons' competencies might need to be updated, so as to fit the current requirements and to adequately highlight their skills and experience.

An important aspect of this topic beyond the scope of the ICRC would also be the promotion of education *by* older persons. The CESCR for example acknowledges the important contributions made by older persons as "transmitter of information, knowledge, tradition and spiritual values".[477] Concerns might be voiced that due to the ever-evolving state of knowledge and skills, their expertise might be too outdated to be helpful to younger generations. Nevertheless, older persons should not be underestimated in their roles as potential transmitters of life and work experience as well as social and cultural values.[478]

With regard to access to culture in old(er) age, any discrimination and barriers should be eliminated, which requires efforts by the state to make cultural sites and facilities available and physically and otherwise accessible for older persons.[479] Older persons should further be encouraged to participate in the cultural life of their communities as consumers and by contributing actively.[480] Appropriate programmes for recreational and other activities can help keep older persons actively involved in their communities and support personal growth and

[474] VIPAA, recommendation 45.
[475] MIPAA, para.40(e); ibid., para.40(f).
[476] ICRPD, art.24.3(c).
[477] CESCR, 1995, para.38.
[478] MIPAA, para.41(f).
[479] CESCR, 1995, para.40.
[480] Ibid., art.17.

independence.[481] Finally, as stated in the ICESCR, older persons should be able to benefit from any developments and achievements of scientific research.[482]

The ICRC advocates for the right to "rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts". The latter is further expanded to encourage and facilitate participation for all without distinction.[483] Interestingly the ICRC did not explicitly mention sport in the scope of this article but clarifies in a later general comment that it should be considered to be included under the term of 'recreational activities'.[484]

As described above, full, inclusive and free participation (for more see chapter 5.4.) in culture and recreational activities would be equally important for older persons. The establishment of special programmes targeted specifically at older persons could possibly facilitate participation but should not fully replace the encouragement of intergenerational activities. A possible Convention on the Rights of Older Persons could however benefit from explicitly including sports as a component of a healthy lifestyle and active ageing.

5.14. Violence and Abuse

(Elder) abuse and violence (both terms being used interchangeably for the purpose of this Master Thesis) can take several forms including physical, psychological, emotional, financial and sexual, all of which can affect older persons in situations of dependency[485] and therefor require attention in the development of a targeted convention. Abuse is not limited to any particular socio-economic environment but can take place in any setting where older persons may be in some form of dependency on others.[486] With no comprehensive framework for identifying and measuring violence available, still too little is known about the nature and extent of

[481] VIPAA, recommendation 47.
[482] ICESCR, art.15.1(a); ibid., art.15.1(b).
[483] ICRC, art.31.
[484] CRC, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, 17 April 2013, CRC/C/GC/17, p.3.
[485] FRA, 2018, p.13.
[486] MIPAA, para.107.

elder abuse.[487] The WHO estimates that up to 95% of cases of elder abuse remain unreported due to the victims' fear of reporting such incidents.[488] Most concealed remain cases of violence in institutional settings such as in residential care arrangements. Many accepted practices and ageist attitudes may not openly victimise older persons but can infringe on their dignity by evoking feelings of humiliation.[489] Abuse and neglect can further take the form of restricting measures such as restrains or locked doors, over- or under-medication, malnutrition or forced feeding, and other practices that disregard older persons' right to integrity and self-determination.[490]

The Toronto Declaration on the Global Prevention of Elder Abuse also clearly emphasises the crucial importance of considering a cultural, gender and vulnerability perspective.[491] In general, older women, especially when affected by poverty, living in rural areas and with lack of legal protection, are more prone to becoming victims of abuse.[492] The communities that older persons live in can both be a resource for seeking protection, but also the offenders, especially in cases of harmful traditional practices.[493] The Inter-American Convention on protecting the Rights of Older Persons includes also "expulsion from the community" and any harmful acts "perpetrated or tolerated by the state or its agents, regardless of where it occurs" to be covered by a relevant provision.[494] As according to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health about 2-10 percent of all elder abuse is perpetrated at home[495], it is necessary to provide protection also in cases of violence by private individuals.[496]

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[487] OEWGA, 2017, p.10.
[488] WHO, *Fact sheets: Elder-abuse*, available from http://www.who.int/news-room/fact-sheets/detail/elder-abuse (accessed 30 July 2018).
[489] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.51.
[490] OEWGA, 2011, p.12.
[491] Toronto Declaration on the Global Prevention of Elder Abuse (17 November 2002).
[492] MIPAA, para.108.
[493] OEWGA, 2012, p.13.
[494] Inter-American Convention on protecting the Rights of Older Persons, art.9.
[495] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.51.
[496] Judge, p.8.

The ICRPD has three relevant articles in this regard namely on "freedom from torture or cruel, inhuman or degrading treatment or punishment"[497], "freedom from exploitation, violence and abuse"[498] and "protecting the integrity of the person".[499] Evidence suggests that impairments can heighten the risk of violence and abuse[500] which is why a comprehensive system of prevention, monitoring and complaints needs to be in place. Importantly, the convention also includes abuse perpetrated by non-state individuals, recognising state's responsibility to also protect from acts of violence committed in the private sphere.

In the ICRC several different forms of violence and abuse are addressed in different articles the most general being article 19 which lists "physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse"[501] as practices to be counteracted by the state. The clear focus lies on providing protection and support to children including prevention, reporting, treatment and rehabilitation.[502]

Notably the ICRC specifically does not primarily focus on the state's responsibility to respect the child's integrity and refrain from any acts of violence, rather on protecting it from abuse suffered "while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".[503] This concurs with the necessity to prevent abuse in old(er) age from family members and other persons providing care at home or in care homes and other facilities[504] as acts of violence against older persons is most prevalent in a family or in a care context.[505]

In relation to the state, the convention prohibits the use of torture or other cruel inhuman or degrading treatment or punishment and the death penalty or life sentences for children in conflict with the law.[506] As freedom from torture is one of the few absolute rights under international human rights law, its application for

[497] ICRPD, art.15.
[498] Ibid., art.16.
[499] Ibid., art.17.
[500] Degener, p.24.
[501] ICRC, art.19.1.
[502] Ibid., art.19.2.
[503] Ibid., art.19.1.
[504] Judge, p.8.
[505] Toronto declaration.
[506] ICRC, art.37(a).

older persons is unquestionable. Its scope in relation to different forms of violence suffered in old(er) age however requires more clarifications. The application of capital punishment is still a very controversial topic, although the UN GA in several instances adopted resolutions urging states to restrict or even abolish the practice, most recently in 2013[507], in line with the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.[508] As more states are abolishing the use of the death penalty, total numbers of executions are sinking as well (as far as can be determined despite the lack of openly accessible records in some countries).[509] With missing international consensus on the issue, an inclusion of this issue in a possible Convention on the Rights of Older Persons is doubtful. The issue of deprivation of liberty is addressed in chapter 5.15.

The ICRC further urges states to strengthen their efforts to prevent children from being subjected to traditional practices that interfere with their health and well-being.[510] Such practices in most cases have a gender component and thus disproportionately affect girls. The most widespread practices include among others "female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence".[511] Less prevalent but arguably equally detrimental are "neglect of girls (linked to the preferential care and treatment of boys), extreme dietary restrictions, including during pregnancy (force-feeding, food taboos), virginity testing and related practices, binding, scarring, branding/infliction of tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, accusations of witchcraft, infanticide and incest".[512] It is therefore most commonly recognised that older women are particularly in need of protection from harmful traditional

[507] UN GA Res 69/186, 18 December 2014.
[508] Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted December 1989) 1642 UNTS 1.
[509] Amnesty International, Global Report on Death sentences and executions 2017, 2018, p.5f.
[510] ICRC, art.24(3).
[511] CEDAW and CRC, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, 14 November 2014, CEDAW/C/GC/31 and CRC/C/GC/18, para.7.
[512] Ibid., para.9.

practices[513] which again calls for addressing the issue in light of a strong cultural and gender perspective.[514]

Though not specifically stated, ICRC article 28 on education contains a relevant provision as well. Stating, that "school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention"[515] suggests the prohibition of corporal punishment in schools. This has been clarified in General Comment Nr.1[516] and General Comment Nr.8[517] to the CRC, which clearly denounce any use of corporal punishment in schools. This part however bears no relevance for older persons.

The ICRC also addresses the treatment and reintegration of victims of any form of violence with a goal to "fosters the health, self-respect and dignity of the child".[518] This provision would equally be applicable to victims of elder abuse and should in the same or a similar way be integrated in a possible Convention on the Rights of Older Persons.

5.15. Access to justice

Access to justice is a fundamental prerequisite for being able to claim one's own human rights. During an early session of the OEWGA three key elements with regard to older persons were proposed: "protection of due process", the "right to an effective remedy" (also regarding economic, social and cultural rights) and the "right to liberty".[519]

The Inter-American Convention on protecting the Rights of Older Persons also emphasises the need for due process but requires states to further provide "procedural accommodations" and "preferential treatment" for older persons, especially in case of ill-health.[520] It also sets down the right to "effective access to

[513] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.8; Inter-American Convention on protecting the Rights of Older Persons, art.9(i).
[514] WHO, 2002.
[515] ICRC, art.28.2.
[516] CRC, General Comment Nr.1 (2001), CRC/GC/2001/1, para.8.
[517] CRC, General Comment Nr.8 (2006), CRC/C/GC/8, para.7.
[518] ICRC, art.39.
[519] OEWGA report 3, p.13.
[520] Inter-American Convention on protecting the Rights of Older Persons, art.31.

justice"[521] entails the obligation to eliminate any legal, procedural or physical barriers that could prevent older persons from seeking justice, but also to facilitate access where needed for example by improving transportation or providing access points in more remote areas. More importantly maybe, it also urges the importance of older persons being recognised as person before the law and are provided assistance if needed.[522] In order for them to exercise this right, especially in developing countries, the issue of older persons not having any official papers needs to be addressed.[523] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa equally requires equal access to legal services, special legal assistance and further the training of officials in dealing with cases involving older persons.[524]

The ICRPD sets down the right of persons with disabilities to be recognised as persons before the law and their entitlement to assistance in exercising this right. It further protects equal access to justice with an additional provision for "procedural and age-appropriate accommodations" which can be viewed as highly relevant for older persons.[525] Although the convention doesn't define any special rights for persons with disabilities, it does recognise their possible need for additional measures to guarantee and facilitate their equal access to justice. Additionally, the ICRPD has a focus on preventing undue loss of legal capacity, in line with the principle of autonomy and self-determination (see chapter 5.11.).[526]

In the context of access to justice, the ICRC acknowledges the evolving capacity of children and requires states to hear and take seriously the views of children, particularly also in legal matters.[527] The Convention protects children from arbitrary deprivation of liberty, only within the scope of the law and as last resort, and affords them the right to legal assistance in case of arrest.[528] States are required to take into consideration the age of the child in any decisions personally affecting

[521] Ibid.
[522] Ibid., art.30.
[523] Judge, p.8.
[524] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.4.
[525] ICRPD, art.13.1.
[526] Degener, p.3.
[527] ICRC, art.12.
[528] Ibid., art.37(b).

it, particularly also through the establishment of minimum ages for legal responsibility.[529] Further the ICRC encourages the implementation of alternative measures to judicial proceedings for children.[530]

Older persons deprived of their liberty, including in life imprisonment, should be afforded the same rights and safeguards as any other person, including mechanisms that guarantee they have access to any special care needed for health or other reasons.[531] As with the age of children, old(er) age is also a factor to be taken into account, particularly with the view of expediting proceedings involving older persons. Legal capacity however should not be restricted due to age reasons. Older persons should have every opportunity to express their own views and preferences, including by appointing a third party to carry out their wishes should they not be able to do so themselves. Where possible, alternative forms of settlement would be beneficial to older persons as well.[532]

5.16. Crisis situations

Crisis situations can take different forms like armed conflict, natural or other disasters, economic destabilisation and other humanitarian emergencies. In these situation, older persons can be particularly at risk as they might be less able to flee, financially support or provide resources for themselves during or after such incidents.[533] If the needs of older persons are not adequately addressed during emergencies, the consequences can severely impact their autonomy which in turn affect other areas of their lives.[534] Equal access should therefore be guaranteed when it comes to essential resources such as food, water and medical attention.[535] Furthermore, targeted assistance that takes into account older persons needs and capabilities for prevention strategies and emergency protocols as well as after the end of a crisis should be provided.[536]

[529] Ibid., art.40.3(a).
[530] Ibid., art.40.3(b)
[531] Inter-American Convention on protecting the Rights of Older Persons, art.13.
[532] Ibid., art.31(a).
[533] MIPAA, para.54.
[534] WHO, 2017, p.11.
[535] MIPAA, para.55.
[536] Inter-American Convention on protecting the Rights of Older Persons, art.29.

The ICRPD references to international humanitarian law for the protection of persons with disabilities in crisis situations and beyond armed conflict also includes natural disasters and other emergencies.[537] This is addressed irrespective of their status as civilian's while their involvement in hostilities or recovery efforts has not been discussed.

In the context of crisis situations, the ICRC only addresses armed conflict in Article 38 by referring to international humanitarian law requiring states to protect children as part of the civilian population.[538] It also addresses the issue of their direct involvement in armed conflict and protects children under 15 years of age from being recruited as fighters.[539] This provision is reiterated and expanded upon in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict which protects all children under 18-years old.[540]

Protection of the civilian population is a fundamental requirement of the rules of war. In this framework civilian older persons are considered for example by the 3rd Geneva Convention, which urges the evacuation of vulnerable 'groups' from areas of conflict.[541] Therefore, a correspondent provisions to explicitly protect them from the direct effects of combat situations, especially in cases of existing illness or impairment, should undoubtedly also be considered for a possible Convention on the Rights of Older Persons. As for their direct involvement in hostilities their status as fighters was not covered in any of the texts considered during this in this context.

Nevertheless, there are several other crisis situations apart from armed conflict that deserve consideration and have not been addressed by the ICRC. Similar to situations of armed conflict, older persons may require assistance in case of natural and other disasters in terms of evacuation, provision of emergency resources and relocation. Additionally, economic destabilisation can be particularly harmful in

[537] ICRPD, art.11.
[538] ICRC, art.38.1; ibid., art.38.4.
[539] ibid, art.38.2; ibid., art.38.3.
[540] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222, art.1-4.
[541] Fourth Geneva Convention, art.17.

old(er) age, which requires an effective system of support by the state even when faced with financial challenges.[542]

5.17. Research and Training

The specific needs of older persons have only recently gained more attention, which is why there is still insufficient data that reflects the heterogeneity of this 'group' in a way that would be needed to adequately represent their human rights in an inclusive and comprehensive way.[543] The Sustainable Development Goals for example call among others for age-disaggregated data to be collected and analysed by countries to help establish the status quo and monitor developments.[544] Especially in developing countries, data is still insufficient to comprehensively portray the situation of older persons, also in relation to other factors such as gender, socio-economic status etc.[545]

In the field of health care further targeted research will be necessary, especially also with a view to including older persons more broadly in clinical studies to explore the efficacy of treatments in old(er) age and gradually improve appropriate health care.[546] More research into aging and the development of new preventative and curative measures can significantly support healthy ageing (see chapter 5.8.).[547] Geriatrics and Gerontology, two crucial fields for guaranteeing suitable age-specific health care, are globally currently inadequately provided, and should be introduced more in university curricula.[548] Training medical, care and other personnel to be aware of issues relating to old(er) age could significantly improve the quality of their interaction with older persons.[549]

The importance of further research is also laid down in other documents. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa for instance calls for the "collection and analysis of

[542] CESCR, 1995, para.17.
[543] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.15.
[544] GA, 2015, p.27.
[545] MIPAA, para.129.
[546] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para.16.
[547] Bond, p.37.
[548] MIPAA, para.82.
[549] VIPAA, recommendation 55.

national data"[550], while the VIPAA urges the commission of studies to improve consideration of the needs and preferences of older persons in development of services and policies.[551]

The ICRC does not specifically urge states to invest in research and data collection on issues relating to children, but in several instances encourages international cooperation which implicitly includes information exchange, which could foster a more fruitful research environment. The convention recommends this in connection to mass media and access to information[552], in the context of health care, treatment and inclusion of children with disabilities[553] as well as generally the right to health[554] and relating to education, most importantly universal basic education.[555]

This all bears relevance for older persons, and the importance on international exchange should not be underestimated, but it fails to amount to the requirements set down in some of the most relevant documents relating to the rights of older persons. This includes the consistent call for better data disaggregated by age and other influencing factors as well as research on diseases and medical treatment etc. In a follow-up to the Second World Assembly on Ageing from 2002, the GA encourages more international cooperation of various stakeholders involved with age-related issues to further the common knowledge base in an effort to support states in their decision making and policy development.[556] Especially research regarding the personal needs of older persons would require more engagement with individuals and organisations representing their interests.[557] Crucial open questions include for example how a life-cycle approach (see chapter 4.1.) could impact well-being in older age and which areas to address, which factors increase or decrease the risk of inequality or dependency and how the most frequent conditions in old(er) age can effectively be prevented and treated.[558]

[550] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, art.21.
[551] VIPAA, recommendation 58.
[552] ICRC, art.17(b).
[553] Ibid., art.23.4.
[554] Ibid., art.24.4.
[555] Ibid., art.28.3.
[556] UN GA, 2010, para.21f.
[557] WHO, 2017, p.23.
[558] Ibid., p.24.

5.18. Summary of Findings

The present analysis yielded mixed results regarding applicability of ICRC provisions to the topics most relevant to old(er) age. Though in some areas no intersection between children's' and older persons' rights could be established, some proved to provide valuable insights. The majority of topics were partially very useful but lacked some substantive elements, that would be necessary in the context of old(er) age. Following this breakup, the paragraphs offer a summary of the findings from the different categories for an easier overview.

The categories with **most overlap** where dignity, participation, health and violence and abuse.

Dignity (see chapter 5.1.) is a fundamental aspect of the human being, the enjoyment of which should be guaranteed to any person. As it may be influenced by the enjoyment of other rights, referencing to it in different context and possibly as a guiding principle will be necessary just as it has been done in the ICRC and other conventions.

Participation (see chapter 5.4.) as another crucial requisite has been duly addressed in the context of children's rights in a way that would be highly relevant in old(er) age as well. Only when it comes to participation in policy making, most notably the convention itself, children lacked participation – a shortcoming that should be absolutely avoided in the development of a possible Convention on the Rights of Older Persons.

Most provisions dealing with health (see chapter 5.8.) in childhood can be considered as relevant to older persons as well as they emphasise the importance of full and indiscriminate access in all areas of prevention, treatment and rehabilitation. The strong impact of health and life decisions in childhood on old(er) age make these provisions particularly relevant. Especially the establishment of a better system of primary health care as an important step to improve accessibility as well as better information on health issues would significantly benefit older persons.

The topic of violence (see chapter 5.14.) is dealt with quite comprehensively in the ICRC, which makes it applicable to old(er) age as well. The focus on preventing abuse from private parties is a central point relevant to children in the same way as to older persons. In relation to the state, violence is addressed in the context of persons deprived of their liberty, which is similar to both age 'groups' but diverges when it comes to life-sentences and capital punishment. The crucial issue of harmful traditional practices is equally addressed in the ICRC in a way relevant to older persons but could be expanded to also include a stronger gender and cultural perspective.

In just over half of the categories there were **some overlaps but also undeniable gaps**. This refers to the categories cumulative discrimination, social security, family, age-friendly environment, education and culture, access to justice, crisis situations and research and training.

Concerning cumulative discrimination (see chapter 5.3.), the ICRC only references to persons with disabilities and refugees, not however to girls or women. The first two topics were addressed quite in depth and covered most aspects that would be relevant in old(er) age as well. It however would need some adaptation in the question of care responsibilities for older disabled persons and a focus on social security and possible contributions of older migrants and refugees. The lack of a gender perspective in the ICRC however was striking, seeing as inequalities would have to be addressed early on so as to ensure equal opportunities. Including the issue in a possible Convention on the Rights of Older Persons is therefore crucial but might not be enough without a broader approach that tackles gender discrimination as early as possible.

Social security (see chapter 5.7.) for children is covered by the ICRC, which gives everyone the right to receive benefits but makes it dependant on the child's and its parents' available resources. While the provision is partly relevant for older persons, it should not presuppose a dependency on the family's financial situation. There is furthermore a need to additionally consider non-contributory pension schemes to combat inequality and poverty in old(er) age.

When it comes to family (see chapter 5.10.), the ICRC can partly offer some valuable angles, especially in view of the desirability of a health family environment, which can be beneficial to enhance participation, intergenerational support and general well-being. The dynamics however are fundamentally different for older persons in that there a relationship of dependency should as far as possible be avoided, and rather be one of mutual benefit. Another aspect not addressed in relation to children, but important for older persons, is the right to marry and found a family, which was also not addressed in any of the documents relating to older persons but should equally be guaranteed in old(er) age.

Creating an age-friendly environment (see chapter 5.12.) built on the idea of universal design that allows full access and participation and takes into account the needs of its members would facilitate the enjoyment of many other rights for both age 'groups' alike. However, important aspects such as the adaptation of housing and infrastructure as a means of maximising autonomy has not been addressed by the ICRC but would require attention in the context of older persons. The ICRC rather focuses on access to information in an age-appropriate way, which certainly is relevant for older persons as well, for whom easy to understand and information is important for supporting autonomy and self-determination. A general consideration of the possible transferability of the concept of the 'best interest of the child' could also be considered in that policy and action relevant to older persons should be guided by their personal needs and preferences.

Education (see chapter 5.13.) might have a different emphasis and different goals for children than for older persons but is equally important. Especially basic education, literacy and numeracy training should be universally accessible, as well as further education which might be needed to ensure better opportunities and continued growth. Age-appropriate material and up-to-date certificates would further be of benefit for older persons who might still be in the workforce. Additionally, the potential of older persons as transmitters of knowledge should not be underestimated, particularly for social and cultural values. With regards to access to culture, the ICRC's provision is fully relevant to older persons as well but would benefit from being complemented by the explicit mention of sports as an important aspect of health ageing.

For both children and older persons access to justice (see chapter 5.15.) is absolutely required to ensure that they can effectively enjoy their human rights. The respective provisions set down in the ICRC could therefore yield a good baseline for providing older persons with procedural safeguards. Additionally, taking into account their respective ages, for example through procedural accommodations as have been recommended for older persons might be necessary to facilitate understanding and account for possible other difficulties. For older persons, claiming and retaining their legal capacity, also through the appointment of a representative, should be a priority that strengthens their autonomy and self-determination.

The ICRC, and specifically also its Optional Protocol, protects children both as civilians and from being recruited into actively taking part in armed conflicts (see chapter 5.16.). Older persons, as civilians, are also covered by the 3rd Geneva Convention but there has yet to be discussed, if there should also be protection from taking part in hostilities. The ICRC doesn't address any further crisis situations, which however would be highly important such as natural or other disasters and economic crisis. Providing protection for older persons also in these kinds of situations would be equally important in order to avoid displacement, dependency and poverty.

Research and training of experts and professionals (see chapter 5.17.) does not find much attention in the ICRC which only encourages international exchange on various topics. As for older persons, detailed, global information is still lacking, there is a need for more age-disaggregated data in areas concerning old(er) age and studies specifically assessing older persons' needs. This information not only would provide a better overview over the situation worldwide but would be crucial for informing policy makers – specifically also in the context of international efforts – on the spectrum of needs to be addressed, geographical, social and individual variations and possible focus areas.

Least relevant or **lacking substantial components** were the categories age-based discriminations, adequate standard of living, work, long-term care, and autonomy.

A major priority will be to address the issue of age-discrimination (see chapter 5.2.) – a topic not dealt with in the ICRC, that would however also benefit children and adolescents. There is a need for more positive images on ageing, highlighting older persons opportunities and contributions in order to counter ageist attitudes and practices and encourage more participation. Just as the ICRC has positively influenced the status of children, a Convention on the Rights of Older Persons could shift societal bias into regarding old(er) age not as a burden, but as an opportunity for continued growth and contribution.

As for an adequate standard of living (see chapter 5.5.), the ICRC does mention some important components such as food, clothing and housing, which are important in the context of older persons as well but would have to be expanded so as to include the central aspect of autonomy and self-determination connected to them. Poverty however, another crucial issue for many older persons, did not receive any special attention in the ICRC. The restricting nature of poverty on the enjoyment of other rights, as well as opportunities throughout the life course, would require the issue to be addressed already at a young age, but certainly also in relation to older persons themselves in connection to social security and other benefits.

The category of work (see chapter 5.6.) is dealt with in a very different fashion in the context of children than it needs to be for older persons. The protective focus applied in the ICRC might be tangentially relevant but would need to be complemented by provisions on non-discrimination in all matters of employment and the different aspects of retirement. Promoting longer working lives could yield a double benefit: promoting more active participation for older persons, and a reduced pressure on social security systems.

Long-term care (see chapter 5.9.) in relation to children, in the sense as it is used in the context of old(er) age, is addressed only very sporadically and concerning monitoring of treatment and facilities. A comparison in this category cannot really be drawn as the focus in the ICRC is on the primary responsibility of third parties to provide care, which in relation to older persons would neglect their right to

autonomy and self-determination. While there seems to be no doubt that it would be most preferable for older persons to be able to remain in their own homes and communities for as long as possible, opinions diverge on the question whether the family or the state should ultimately be primarily responsible for offering support in case of more acute care needs. Another topic, which may be increasingly relevant with age, is the topic of palliative care, which would be necessary to ensure dignity for gravely or terminally ill persons.

The right to autonomy over matters concerning one's own live (see chapter 5.11.), arguably one of the most necessary guarantees for older persons, was no issue in the ICRC itself but has been acknowledged by the CRC to progressively increase with age. In old(er) age loss of autonomy should not be attributed to older persons' individual capabilities, but predominantly arises when barriers prevent the exercise of this right. Providing support and eliminating barriers in order to maximise a person's ability to live an autonomous life should therefore be at the core of any approach to this topic.

As has been shown, while, not unexpectedly, a comprehensive overlap could not be established, most categories or aspects thereof were found to clearly bear significance for older persons as well. The focus of most overlapping areas was different for children and older persons, which was to be expected but can be remedied by adapting them to the specific context. Where gaps could be found, their identification allowed for conclusions on possible ways to bridge them, which too can be considered useful information.

A number of aspects might however not profit from approaching them from an angle of the ICRC at all but are better represented in other international conventions and documents such as the ICRPD and the MIPAA as well as established regional norms in relation to old(er) age like the Inter-American Convention on protecting the Rights of Older Persons and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. Nevertheless, the potential of complementary consideration of other approaches and different takes on a topic should not be underestimated.

6. Conclusion

Slowly but steadily the world population is ageing just as its individuals are. While this is a great achievement, owed to better environment, health care and resource distribution, it is also associated with a number of (not new but more acutely felt) challenges for old(er) age, but also for societies. It can no longer be assumed that older persons' rights are protected under existing conventions, as that would disregard more specific aspects of rights relevant at that stage of life. While there is an established international framework for the human rights of older persons (see chapter 4.1.), it has not been effectively implemented and lacks the mechanisms to ensure that the concerned can claim their rights. Furthermore, past efforts failed to give due weight to all facets of human rights that are economic, social and cultural but also civil and political rights as they primarily focused on the protection of older persons with regard to care, social security, discrimination and abuse.[559] First steps towards achieving a more comprehensive protection have been taken by establishing the OEWGA with a mandate to develop a draft for a possible International Convention on the Rights of Older Persons (see chapter 4.2.).

A first difficult question that will have to be answered is who would be covered by a Convention on the Rights of Older Persons. Due to the heterogeneous character of old(er) age, a classification in the narrow sense, such as the age limit defined in the ICRC, would most probably not be sensible (see chapter 2.). There have on the contrary been calls for a deconstruction of categorizations based on chronological age. Following a more open approach like the ICRPD and avoiding a strict definition would better consider geographical, cultural and individual specificities.

The general trend moves towards a broader understanding that there is a need for protecting older persons rights more broadly following a HRBA. Similar to the 'three Ps' associated to children's rights (see chapter 5), any approach to older persons rights would require states to uphold their obligations to respect, protect and fulfil older persons human rights. In contrast to the ICRC, which takes a more protective approach, the emphasis would probably rather lie on respecting older

[559] Independent Expert on the enjoyment of all human rights by older persons, 2016, para..119.

persons' autonomy and freedoms and fulfilling the obligation to facilitate full and equal access in all areas of live by removing barriers and providing assistance where needed.

The goal of this thesis was to establish whether and in which areas the ICRC could be consulted for the development of a possible Convention on the Rights of Older Persons. For this purpose, a content analysis of seven international and regional documents relating to the human rights of older persons allowed for a triangulation of the most frequently addressed, and therefore arguably most relevant areas of concern in the context of old(er) age (see chapter 5.). The results yielded a total of 17 categories, of which one contained three sub-categories. The different focus with which the different text addressed (or didn't address) the topics demonstrated how varied some approaches can be and how laborious the road to finding consensus on how to frame them. The areas of work, health, age-friendly environment and education were dealt with in all documents, reinforcing the observation, that there is a tendency to focus more on the economic, social and cultural aspect of human rights. However, that dignity for instance was explicitly mentioned only in three of the documents is undoubtedly not due to a lack of prioritization, but is probably rather owed to the fact, that it is presupposed as a fundamental principle for the enjoyment of human rights.

A subsequent analysis of the ICRC for these categories and their relation to old(er) age has yielded different results for the various categories, some of which have proven to be more relevant than others (see chapters 5.1.-5.17.). It was not possible to generally establish that the ICRC would be beneficial as reference in all areas, but I have been able to draw several conclusions both from the parallels and gaps.

Considering the aspects with most or partial overlap would certainly be helpful in developing similar arguments and provisions in the context of older person. This could supplement existing considerations in line with other conventions such as the ICRPD and possible allow for new impulses. While an adaptation of the norms may be necessary, they provide a baseline to be added to the current discussion.

This included for example the respect for a persons' inherent dignity (see chapter 5.1.) and its interaction with many other rights. Just as has been done by the ICRC, declaring it to be a guiding principle for all action related to older persons, including the interpretation of a possible convention itself would certainly add value to the overall framework. The inherent nature of dignity, as stated by various human rights documents including the ICRC, would be crucial for arguing that the enjoyment of human rights cannot be restricted with age.

Full and equal participation in all areas of private and public life was another area with high levels of overlap (see chapter 5.4.). As Arnstein's 'ladder of citizen participation' demonstrates, there are different levels of participation, some of which allow for more control over relevant outcomes than others. To effectively be able to shape their own environment, older persons require a high level of control over policy directions. While children were not substantially involved in the development of the ICRC, their contribution to policy developments have since been more effective. A more direct involvement of older persons in the drafting process of a possible new Convention on the Rights of Older Persons would however be crucial, which rather suggests following the good practices of the ICERPD drafting history, in which persons with disabilities were consulted during all stages.

Especially in the development of facilities and services, direct consultation of older persons would ensure better attention to their needs and preferences an improve access and quality (see chapter 5.12.). An age-friendly environment can profit from the implementation of a universal design, which would not benefit only one particular 'group' but could improve access and usability for everyone. This includes for example that services need to be oriented towards the needs of the recipient, facilities to being physically accessible and information being given in an easily understandable form. It also includes the development of infrastructure, to increase mobility and facilitate accessibility for older persons.

Access to health care for example, another topic where the ICRC provides adequate protection, is a crucial aspect for healthy ageing and other areas such as poverty (see chapter 5.5.) and autonomy and self-determination (see chapter 5.11.) among others. Extending the network of health care through primary health care

facilities also in rural areas and expanding availability of assistive devices as proposed in the ICRC would significantly improve access especially for disadvantaged individual living in remote areas or poverty.

Any approach to the right to health of older persons needs to consider factors accumulated during the whole life course, which makes a connection to childhood so important. However, it is also possible to peruse the achievement of the highest attainable standard of health irrespective of any existing conditions or impairments. Prevention of newly emerging diseases or impairments, including through accidence or cases of abuse is crucial in this relation too.

Concerning the issue of violence, the ICRC has some very valuable aspects to offer for considerations relating to a legal instrument protecting older persons (see chapter 5.14.). The subject is extensively addressed both in relation to official and private perpetrators. For older persons, who most frequently become victims of abuse in a family or care setting, including protection in the private sphere is essential. A thematization of harmful traditional practices similarly to the relevant provisions in the ICRC will also be necessary but might have to be extended to also cover a gender perspective on the issue to protect the particularly vulnerable 'group' of older women.

Generally, in the context of cumulative discrimination, the ICRC did not specifically address gender, although gender inequalities in many cases start already with disadvantages faced by girls (see chapter 5.3.1.). In the long run, this lack could unfortunately have a detrimental impact on older women which is not as easily countered at that stage. The convention however does provide more protection for children with disabilities (see chapter 5.3.2.) and refugees (see chapter 5.3.3.), which could definitely impact how these 'groups' fare in old(er) age. A protection in a possible Convention on the Rights of Older Persons may however be better informed by referring directly to the ICRPD, the ICMW and the Convention relating to the Status of Refugees etc.

Related to the issue of refugees, protection of vulnerable 'groups' in crisis situations is a relevant topic for older persons (see chapter 5.16.). The ICRC is very narrow in its protection and concentrates only on children's involvement in armed conflict. While their status as civilians is analogous to that of older persons, the age

limit on active participation in hostilities provided by the ICRC and its optional protocol is not as easily comparable, also because there is a lack of information on the status of older persons as combatants. Missing in the content of the ICRC is however a directive for action in other emergency situations such as natural or other disasters and economic crisis. There is further a need to acknowledge the potential of older persons in recovery and rehabilitation efforts and as transmitters of knowledge and values to their communities in case of long-term displacement.

But their contributions as mentors and teachers is often underestimated also in more general terms when discussing the right to education (see chapter 5.13.), which focuses more on receiving training and educations. Most importantly, and addressed also in the ICRC, is the guarantee of universal basic education including literacy and numeracy skills, as ignorance can have detrimental effects on crucial areas like employment (see chapter 5.6.) and participation (see chapter 5.4.). Further access to higher levels of education and vocational training without discrimination is necessary for older persons to update and expand their skills and retain their economic competitiveness.

After retirement, or also in the case of prior loss of employment, older persons should be eligible to receive a pension and other benefits. In the case of children, eligibility for benefits is highly dependent on their parents' or legal guardian's financial situation – an approach that would not work for older persons. To mitigate the effects of inequality and the risk of poverty, non-contributory pension systems should preferably be implemented to cover all older persons irrespective of their socio-economic or other status.

Benefits and support to access quality long-term care in the preferred form and place of residence is another important requirement for older persons' quality of life. The issue is not addressed in a relevant context in the ICRC, especially since the primary care responsibility it gives to the family or legal guardian would not be beneficial in the context of old(er) age. With a view to guaranteeing the highest level of autonomy and self-determination (see chapter 5.11.), older persons should have every opportunity and assistance to remain in their own homes and communities for as long as they wish and are able to.

The importance of autonomy and self-determination however goes beyond care arrangements and spans over all areas of life. In the context of the ICRC the topic was not assigned the same significance, owing to their relation of dependency to third parties. To avoid exactly this kind of paternalistic setting, a clear emphasis will have to be put on the issue, similarly to the approach taken in the ICRPD.

Self-determination is further connected to access to justice (see chapter 5.15.) as depriving older persons of their legal capacity through guardianship significantly restricts their autonomy. Providing older persons with the required documentation and possibilities to express their views and preferences goes a long way to secure self-determination. Additionally, the provision of procedural accommodations, proposed also by the ICRC, could protect vulnerable older persons, especially in case of an existing illness or impairment.

But even the areas with no relevant or applicable provisions in the ICRC allow for interesting study objects. Some gaps, such as the lack of explicit mention of the issue of poverty or implementation of universal design for a more age-friendly environment seem unexpected. However, a lack of explicit mention of an issue does not automatically mean that it has no relevance. It might even be that by addressing the gap in a Convention on the Rights of Older Persons, new impulses could be given that ultimately might even impact children's rights. Take for example age-based discrimination (see chapter 5.2.): the focus of the ICRC might at the time of its adoption not have considered specific protection of children from being discriminated based on their age – just as it hadn't been included in the ICESCR. In the context of old(er) age however, addressing the issue will be of crucial importance. Age-based discrimination has been identified as one of the most problematic issues for older persons, particularly because it influences individual experience in a multitude of other areas. Coming from the opposite direction, a thematization in the context of older persons could potentially prove beneficial for children as well.

Most issues would certainly also benefit from a more intergenerational approach that acknowledges the interconnectedness of ages. As life is a continuum, it is not

unexpected, that there are correlations between childhood and old(er) age that, if addressed correctly, could significantly improve health and well-being for older persons. There is a need to address issues such as health, adequate standard of living and education early on to prevent detrimental outcomes later in life. This requires combatting inequalities in early stages of life – younger adults nowadays for example experience stronger discrepancies and are more at risk of poverty, which can accumulate over the life course and result in inequalities in old(er) age. The enjoyment of the highest attainable standard of health in later years is preceded by a life of health decisions and access to services if needed. It is therefore necessary for a comprehensive and sustainable approach to older persons' well-being, to simultaneously focus on those who have yet to become old.

On the other hand, older persons can also enrich the life and development of children and adolescents. Parting experience and information and passing down morals and values, including respect for human rights, could add immense value to younger generations and foster an environment of intergenerational solidarity. I would even go as far as to say, that explicitly addressing this interconnectedness in a possible International Convention on the Rights of Older Persons would be highly beneficial. That would highlight the fact that old(er) age is not a separate stage of life one enters at some given moment, but that it is a fundamental and valuable part of an individual's entire life cycle. By emphasising the impact of opportunities, obstacles and choices in earlier life it could promote a more holistic long-term approach to many issues in relation to children and adults, that would ultimately impact quality of life in old(er) age.

In the light of the necessity for a more comprehensive human rights framework for older persons the OEWGA will need to move forward with a draft convention, as requested by the GA and emphasised by the working groups' chair during the last meetings, regardless of lack of unanimity.

Adding a consideration of the ICRC to the working group's discussion would certainly be beneficial. As has been shown in the course of this Master Thesis, there are several areas of overlap, where the content of the convention could inform the OEWGAs process of formulating a draft convention. Most importantly it would

also be necessary to apply a life cycle approach to the human rights of older persons by considering the interdependency of childhood and old(er) age. While in some areas it may be more sensible to look at other conventions and documents for reference, a thorough and comprehensive discussion should not exclude learnings that can be drawn from the ICRC.

Nevertheless, simultaneously strengthening existing mechanisms such as the MIPAA could in the meantime promote better protection and pave the way for the implementation of a binding instrument. Significant involvement of professionals from various fields working with older persons, organizations and governments but most importantly older persons themselves is needed to ensure active participation and that all relevant voices are heard and considered in the process. A possible Convention on the Rights of Older Persons would also require a sound implementation strategy and strong monitoring mechanisms. Making sure that enforcement is available and effective, helps victims of violations claim their rights.

The most protracted challenge will probably be to shift public perspectives from regarding older persons as a burden to be considered in cost and risk calculation, to acknowledging their potential contributions to society. While illness or impairment of older persons may require states to invest in eliminating barriers and providing assistance if needed, full participation should be a priority, to both provide them with the same opportunities and simultaneously harnessing the huge potential that is the growing social 'group' of older persons. While it needs to be recognised that such an investment might require a more progressive realisation by some states, full inclusion of all its citizens should be a clear priority.

The world population is ageing, and everyone with it. It is unquestionable, that older persons, just like anyone else, are entitled to the same level of empowerment and protection, regardless of their age. Ensuring the full enjoyment of all human rights by older persons, is not only crucial for the individuals themselves and the whole of society, it is ultimately an investment in the future of every single one of us.

7. Bibliography

Adams, Sue, 'No place like home? Housing inequality in later life', in: M. Dean and P. Cann (ed.), *Unequal Ageing: The Untold Story of Exclusion in Old Age*. Bristol, Policy Press, 2009, pp.77-100.

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev.5.

Alvarez, Jose E., *International Organisations as Law Makers*, Oxford, Oxford University Press, 2006.

American Declaration on the Rights and Duties of Man (adopted 1948) AG/RES. 1591 (XXVIII-O/98).

Amnesty International, Global Report on Death sentences and executions 2017, 2018.

Amnesty International, *The backlash – Human Rights at risk throughout the world*, 2001, Available from https://www.amnesty.no/aktuelt/flere-nyheter/arkiv-nyheter/backlash-human-rights-risk-throughout-world (accessed 10 July 2018).

Arnstein, Sherry R., 'A Ladder of Citizen Participation', *Journal of the American Institute of Planners*, vol.35, no.4, pp.216-224.

Aslan, Dilek, 'A long way since the Vienna International Plan of Action on Ageing… 1st of October, the international day for older persons…', *Turkish Journal of Geriatrics (Turk Geriatri Dergisi)*, vol.19, no.4, 2016, pp.4-4.

Austrian, Sonia G., *Developmental theories through the life cycle*, New York, Columbia University Press, 2008.

Baer, B., A. Bhushan, H.A. Taleb, et.al., 'The Right to Health of Older People', *Gerontologist*, vol.56, 2016, pp.206-217.

Boehm, Andreas 'Grounded Theory - wie aus Texten Modelle und Theorien gemacht werden' (Grounded theory – how models and theories are formed from texts), in A. Boehm, A. Mengel, and T. Muhr (ed.), *Texte verstehen: Konzepte, Methoden, Werkzeuge (understanding texts: concepts, methods and tools)*, Konstanz, Univ.-Verlag Konstanz, 1994, pp.121-140.

Bond, John et.al. (ed.), *Ageing in Society. European Perspectives on Gerontology*, London et.al., Sage Publications, 2007.

Bowen, Glenn A., ‘Document Analysis as a qualitative Research Method’, *Qualitative Research Journal*, vol.9, nr.2, 2009.

Bowers Andrews, Arlene and Natalie Hevener Kaufman, *Implementing the U.N. Convention on the Rights of the Child: A Standard of Living Adequate for Development*, Westport, Praeger, 1999.

Brasilia Declaration (6 December 2007).

Brems, Eva, Ellen Desmet and Wouter Vandenhole, *Children’s Rights Law in the Global Human Rights Landscape: Isolation, inspiration, integration?,* London, Routledge, 2017.

Burton, Ann, ‘Older refugees in humanitarian emergencies’, *The Lancet*, vol.360, supp.1, 2002, pp.47-48.

Capps, Patrick, *Human Dignity n the Foundations of International Law*, Oxford, Hart Publishing, 2009.

CEDAW, *General recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures)*, 18 August 2004.

CEDAW, *General recommendation No. 27 on older women and protection of their human rights*, 16 December 2010, CEDAW/C/GC/27.

CESCR, *General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant),* 13 December 1991, E/1992/23.

CESCR, *General comment No. 6: The economic, social and cultural rights of older persons*, 8 December 1995, E/1996/22.

CESCR, General Comment No.19. The right to social security (art.9), 23 November 2007, E/C.12/GC/19.

Charter of Fundamental Rights of the European Union (2012) OJ C 364/01.

CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1),* 29 May 2013, CRC/C/GC/14.

CRC, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31),* 17 April 2013, CRC/C/GC/17,

CRC, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20.

CRPD, *General comment No. 4 (2016) on the right to inclusive education*, 25 November 2016, CRPD/C/GC/4.

CRPD, *General Comment No.5 (2017) on living independently and being included in the community*, 27 October 2017, CRPD/C/GC/5.

CRC, General Comment Nr.1, 2001, CRC/GC/2001/1.

CRC, General Comment Nr.8, 2006, CRC/C/GC/8.

Declaration of the Rights of the Child (adopted 20 November 1959).

Degener, Theresia, 'Disability in a Human Rights Context', *laws*, 2016, Available from MDPI (accessed 19 July 2018).

Doron, Israel and Itai Apter, 'The Debate Around the Need for an International Convention on the Rights of Older Persons', *The Gerontologist*, vol.50, no.5, 2010, pp.586-593.

Downs, M. and B. Bowers (ed.), *Excellence in Dementia Care*, New York, Open University Press, 2008.

Drezner, Daniel W., 'Regime Proliferation and the Tragedy of the Global Institutional Commons', *Fletcher International Law And…*, discussion paper no. 1/2009, 2008, Available from http://fletcher.tufts.edu/FILA/~/media/Fletcher/Microsites/Fila/PDFs/FILADiscussionPaperNo0109.pdf (accessed 11 July 2018).

Eugeen Verhellen, 'The Convention on the Rights of the Child', *International Handbook of Children's Rights Studies*, Routledge, 2015, Available from https://www.routledgehandbooks.com/doi/10.4324/9781315769530.ch3 (accessed 1. August 2018).

FRA, *Fundamental Rights Report 2018*, Luxembourg, Publications Office of the European Union, 2018.

Frick, Smiljana Simeunovic, 'The Committee's View on Children's Participation in the CRC Monitoring and Reporting Process', *Revista de Asistenta Sociala*, vol.9, nr.2, 2012, pp.27-37.

Geneva Convention relative to the Protection of Civilian Persons in Time of War (4th Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

Gilmour, Andrew, *The global Backlash against Human Rights* (edited lecture text), University of California, Sacramento, 2018, Available from https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23202&LangID=E (accessed 10 July 2018).

Government of Argentina, *Argentinian Draft Resolution on a Declaration of Old Age Rights*, New York, 1948.

Grant, G. et.al., *Learning Disability: A Life Cycle Approach.* Maidenhead, McGraw-Hill Education, 2010.

Harpur, Paul, 'Old Age is not just Impairment: The CRPD and the need for a Convention on Older Persons', *University of Pennsylvania Journal of International Law*, vol.37, no.3, 2016, pp.1027-1059.

HelpAge International, *Ageing in the 21st Century: Chapter 4: The voices of older persons*, Available from http://www.helpage.org/resources/ageing-in-the-21st-century-a-celebration-and-a-challenge/ageing-in-the-21st-century-chapter-4-the-voices-of-older-persons/ (accessed 8 June 2018).

HelpAge International, *Building a future for all ages. Creating an age-inclusive post-2015 development agenda*, 2012, Available from http://www.helpage.org/resources/publications/?ssearch=Building+a+future+for+all+ages%3A+Creating+an+age-inclusive+post-2015+development+agenda&adv=0&topic=0&region=0&language=0&type=0 (accessed 20 July 2018).

Herro, Annie, 'The human rights of older persons: the politics and substance of the UN Open-Ended Working Group on Ageing', *Australian Journal of Human Rights*, vol.23, no.1, 2017, pp.90-108.

Human Rights Council Res 24/20, 27 September 2013.

Independent Expert on the enjoyment of all human rights by older persons, *Report of the Independent Expert on the enjoyment of all human rights by older persons*, 8 July 2016, A/HRC/33/44.

Inter-American Convention on Protecting the Rights of Older Persons (adopted 15 June 2015, entered into force 11 January 2017).

International Convention on the Elimination of all Forms of Discrimination against Women (ICEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 1.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (adopted 18 December 1990) 2220 UNTS 3.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted December 1989) 1642 UNTS 1.

CEDAW and CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 14 November 2014, CEDAW/C/GC/31 and CRC/C/GC/18, para.7.

International Convention on the Rights of Persons with Disabilities (ICRPD) (adopted on 13 December 2006, entered in to force 3 May 2008) 2515 UNTS 3.

International Convention on the Rights of the Child (ICRC) (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3.

International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

International Labour Organization (ILO), *World Employment and Social Outlook – Trends 2018*, 2018.

International Network for the Prevention of Elder Abuse et.al., *Strengthening Older People's Rights: Towards a UN Convention*, 2010, Available from https://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf (Accessed 9 June 2018).

James, Stephen, 'A Forgotten Right? The Right to Clothing in International Law', conference paper presented at The Sixteenth Annual Australian and New Zealand Society of International Law (ANZSIL), 2008.

Judge, Lindsay, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards*, 2008, Available from

http://globalag.igc.org/elderrights/world/2008/internationallaw.pdf (accessed 18 June 2018).

Kuh, Diana et.at., *A Life Course Approach to Healthy Ageing*, Oxford, Oxford University Publishing, 2013.

Madrid International Plan of Action on Ageing (MIPAA) (adopted April 2002).

Manthorpe, J. and S. Iliffe, *Depression in Later Life*, London, Jessica Kingsley Publishers, 2005.

Mayring, Philipp, *Einführung in die qualitative Sozialforschung*, Weinheim, Psychologie Verlags Union, 1999.

Mégret, Frédéric, 'The Human Rights of Older Persons: A Growing Challenge', *Human Rights Law Review*, vol.11, no.1, 2011, pp.37-66.

Mestre, Ana and Tim Cooper, 'Circular Product Design. A Multiple Loops Life Cycle Design Approach for the Circular Economy', *The Design Journal*, vol.20, 2017, pp.1620-1635.

Morrow-Howell, Nancy and Ada C. Mui (ed.), *Productive Engagement in Later Life: A Global Perspective*, New York, Routledge, 2012.

Mudrazija, S., 'The balance of intergenerational family transfers: A life-cycle perspective', *European Journal of Ageing*, vol.11, no.3, 2014, pp.249-259.

Mukumu, Elvis Fokala, 'The protection of the socio-economic rights of older women: an appraisal of General Recommendation 27 of the CEDAW Committee: feature', *ESR Review: Economic and Social Rights in South Africa*, vol.12, no.1, 2011, pp.6-8.

OECD, *Preventing Ageing Unequally*, Paris, OECD publishing, 2017, Available from https://read.oecd-ilibrary.org/employment/preventing-ageing-unequally_9789264279087-en#page1 (accessed 29 June 2018).

OEWGA, *Report of the Open-Ended Working Group on Ageing*, Eighth working session, 2017.

OEWGA, *Report of the Open-ended Working Group on Ageing*, Fifth working session, 2014.

OEWGA, *Report of the Open-ended Working Group on Ageing*, Fourth working session, 2013.

OEWGA, *Report of the Open-ended Working Group on Ageing*, Second working session, 2011.

OEWGA, *Report of the Open-ended Working Group on Ageing*, Seventh working session, 2016.

OEWGA, *Report of the Open-ended Working Group on Ageing*, Third working session, 2012.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222.

Poffé, Léon, 'Towards a New United Nations Human Rights Convention for Older Persons?', *Human Rights Law Review*, vol.15, nr.3, 2015, pp.591–601, Available from OUP (accessed 31 March 2018).

Political Declaration of the Community Charter of Fundamental Social Rights of Workers (adopted 9 December 1989).

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 1 July 2003, entered into force 25 November 2005).

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (adopted 31 January 2016).

Richard B. Chase and Nicholas J. Aquilano, *Production and operations management : a life cycle approach*, Homewood (Ill.), Irwin, 1992.

Richards-Schuster, Katie and Suzanne Pritzker, 'Strengthening youth participation in civic engagement: Applying the Convention on the Rights of the Child to social work practice', *Children and Youth Services Review*, vol.57, 2015, p.90-97.

Sciubba, Jennifer Dabbs, 'Explaining campaign timing and support for a UN Convention on the Rights of Older People', *The International Journal of Human Rights*, vol.18, no.4-5, 2014, pp.462-478.

Seatzu, Francesco, 'Sulla convenzione dell'organizzazione degli stati americani sui diritti delle persone anziane' (On the Inter-American Convention on the Rights of Older Persons), *Anuario español de derecho internacional*, vol.31, 2015, pp.349-366.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted December 1989) UNTS.

Sidorenko, Alexandre and Alan Walker, 'The Madrid International Plan of Action on Ageing: from conception to implementation', *Ageing and Society*, vol.24, no.2, 2004, pp.147-165.

Smith, James P., *A Life Cycle Family Model*, Cambridge (Mass.), National Bureau of Economic Research, 1973.

Türkelli, Gamze Erdem and Wouter Vandenhole, 'The Convention on the Rights of the Child: Repertoires of NGO Participation', *Human Rights Law Review*, vol.12, no.1, 2012, pp.33-64.

UDHR (adopted 10 December 1948) A/810.

UN Department of Economic and Social Affairs, *World Population Prospects: The 2017 Revision, Key Findings and Advance Tables*, 2017, Available from https://esa.un.org/unpd/wpp/Publications/Files/WPP2017_KeyFindings.pdf (accessed 8 June 2018).

UN GA Res 65/182, 21 December 2010.

UN GA Res 67/139, 20 December 2012.

UN GA Res 69/186, 18 December 2014.

UN Principles for Older Persons, 16 December 1991, GA Res 46/91.

UN Secretary-General, *Towards the 2nd World Assembly on Ageing*, 13 December 2000, E/CN.5/2001/PC/2.

UN World Conference on Human Rights, *Vienna Declaration and Programme of Action* (adopted 25 June 1993).

UN, *The World's Women 2015: Trends and Statistics*, New York: United Nations, 2015.

UN, *World Population Ageing*, 2015, Available from http://www.un.org/en/development/desa/population/publications/pdf/ageing/WPA2015_Report.pdf (Accessed 21 March 2018).

UNESCO, *Recommendation on adult learning and education*, 2015, Available from http://unesdoc.unesco.org/images/0024/002451/245179e.pdf (accessed 22 July 2018).

United Kingdom Government Office of Science, *Future of an Ageing Population*, 2016.

UN GA, *60th Plenary Meeting of the 67th session*, 67/PV.60, 20 December 2012.

UN Proclamation on Ageing, 16 October 1992, GA Res 47/5.

UN GA, *Transforming our world: the 2030 Agenda for Sustainable Development*, in Resolution A/RES/70/1, 2015, pp.14-27.

Vienna International Plan of Action on Ageing (VIPAA) (adopted 6 August 1982).

Toronto Declaration on the Global Prevention of Elder Abuse (17 November 2002).

WHO, *10 Facts on Ageing and Health*, 2017, Available from http://www.who.int/features/factfiles/ageing/en/ (Accessed 9 June 2018).

WHO, *Global action plan on the public health response to dementia 2017-2025*, 2017, Available from http://www.who.int/mental_health/neurology/dementia/action_plan_2017_2025/en/ (accessed 30 July 2018).

WHO, *Global Strategy an Action Plan on Ageing and Health*, Geneva, 2017, Available from http://www.who.int/ageing/WHO-GSAP-2017.pdf?ua=1 (accessed 13 June 2018).

WHO, *WHO Definition of Palliative Care*, 2010, available from www.who.int/cancer/palliative/definition/en/ (accessed 29 July 2018).

WHO, *World Report on Ageing and Health*, 2015, Available from http://apps.who.int/iris/bitstream/10665/186463/1/9789240694811_eng.pdf?ua=1 (accessed 8 June 2018).

Winter, Joachim K. K., Kathrin Schlafmann, and Ralf Rodepeter, 'Rules of Thumb in Life-cycle Saving Decisions', *Economic Journal*, vol.122, 2012, pp.479-501.

Abstract

The world's population is ageing not only in total numbers but also regarding the proportion of older persons. While this is a great achievement, it is also associated with a number of challenges for older persons, but also for societies.

Although Human Rights are universal, there seems to be a regrettable tendency for them to become less accessible with the progressing of the life course. The importance of the topic of older persons' human rights has increasingly received more attention in in the past years but the existing international legal framework is still limited.

This Master Thesis meant to establish whether and in which areas the ICRC could be consulted for the development of a possible future Convention on the Rights of Older Persons. For this purpose, a qualitative content analysis of seven international and regional documents relating to the human rights of older persons allowed for a triangulation of some crucial areas of concern. The resulting categories were subsequently applied to the ICRC in an effort to establish possible parallels and discrepancies.

While a comprehensive overlap could not be established, most categories or aspects thereof were found to clearly be significant for older persons as well. Adding a consideration of the ICRC to the current discussion would therefore certainly be beneficial. Most importantly it would also be necessary to apply a life cycle approach to the human rights of older persons by considering the interdependency of childhood and old(er) age.

Key Words

Human rights, Older persons, international law, children's rights

Kurzfassung

Die weltweite Population wird älter, nicht nur in ihrer Gesamtzahl sondern auch was den Anteil älterer Menschen betrifft. Während das eine große Errungenschaft ist, führt sie auch zu einigen Herausforderungen für ältere Menschen und die Gesellschaft.

Obwohl Menschenrechte universell sind, scheinen sie mit dem Alter bedauerlicherweise weniger zugänglich zu werden. Das Thema Menschenrechte älterer Menschen hat in den letzten Jahren immer mehr an Bedeutung gewonnen, aber das internationale rechliche Rahmenwerk ist immer noch beschränkt.

Diese Masterarbeit hatte zum Ziel heruszufinden, ob und in welchen Bereichen die Kinderrechtskonvention bei der Entwicklung einer möglichen Menschenrechtskonvention für ältere Menschen herangezogen werden könnte. Dafür wurden bei einer qualitative Inhaltsanalyse aus sieben Dokumenten zum Thema Rechte älterer Menschen einige besonders wichige Bereiche herausgearbeitet. Die daraus entwickelten Kategorien wurden dann mit der Kinderrechtskonvention verglichen um Parallelen und Unterschiede zu finden.

Während keine vollständige Überschneidung festzustellen war, ergab sich bei den meisten Kategorien oder Teilen davon auch eine klare Relevanz für ältere Menschen. Die Kinderrechtskonvention zur gegenwärtigen Diskussion hinzuzuziehen, wäre daher mit Sicherheit vorteilhaft. Vor allem wäre es auch notwendig bei Menschenrechte älterer Menschen ein Lebenszyklus-Modells anzuwenden und sie im Lichte der Wechselwirkungen zwischen Kindheit und Alter zu betrachten.

Schlagwörter

Menschenrechte, ältere Menschen, internationales Recht, Kinderrechte