

Endorsing a UN Convention on the Rights of Older Persons

BAGSO calls for the worldwide promotion of the rights of older people

Preliminary remarks

BAGSO, the German National Association of Senior Citizens' Organisations, which represents the interests of millions of older people in Germany through its 120 member organisations, supports the international process to create a United Nations (UN) Convention on the Rights of Older People.

Ever since the Universal Declaration of Human Rights of 1948, human rights have been universally applicable. Older men and

women are thus in principle legally equal to all other persons.

However, there are considerable gaps in the protection of older people worldwide. In many countries, for example, there is a lack of social security for older persons, and of adequate treatment for those in need of care. Legal protection for older persons against violence and abuse is also inadequate in many member states. Age discrimination exists in many ways, reinforced by negative age stereotypes.

BAGSO therefore expressly welcomes the fact that since 2010, the effectiveness of the existing human rights system has been reviewed by the United Nations Open-ended Working Group on Ageing¹ and, in addition, by an Independent Expert on the Enjoyment of all Human Rights by Older Persons².

1 *United Nations Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons* – UN OEWG-A. For more information see: <http://social.un.org/ageing-working-group/>.

2 *Independent Expert on the enjoyment of all human rights by older persons*. Information on the work of the Expert available at: <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/IEOlderPersons.aspx>.

In her report of 2016, the then Independent Expert Dr Rosa Kornfeld-Matte came to the conclusion that the current protection of the human rights of older persons was not sufficient.³ Although there were indications of good practices in the implementation of existing laws, open issues and gaps in some areas existed that needed in-depth examination.

The report also pointed out that, although the Madrid International Action Plan on Ageing⁴ includes references to human rights, it is not a human rights instrument and addresses aspects of ageing mainly from a development perspective. The Independent Expert therefore recommended the establishment of an international Convention on the Rights of Older Persons.

BAGSO believes that such a convention would not need to establish special rights for certain groups of people. It would instead specify and substantiate the universal human rights from the perspective of older people and against the background of their specific living conditions, which should be systematically taken into account in human rights protection. At the same

time, the preamble of a Convention on the Rights of Older Persons should explicitly state that older people are not per se vulnerable and in need of protection.

Within the scope of the creation of the above-mentioned Working Group, BAGSO first joined the discussion on a possible extension of human rights protection for older people in 2012.⁵ After the presentation of the Independent Expert's report, in a further statement⁶ in 2016, BAGSO strongly endorsed the Expert's call for the UN member states to press ahead with the development of a convention to protect the rights of older people and for the Open-ended Working Group to submit proposals to the UN General Assembly on the content of an international instrument. In terms of substance, BAGSO pointed out gaps in protection in German family and social law on the one hand, and the special need for protection of older people worldwide on the other.

On the occasion of the 70th anniversary of the Universal Declaration of Human Rights by the United Nations in December 2018, BAGSO again drew attention to its call for

³ The report is available in all official languages of the UN at: <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/Reports.aspx>.

⁴ The Madrid International Plan of Action on Ageing (MIPAA) is a non-binding policy instrument. Implementation of the recommendations and reporting are voluntary. The reference to the Plan is, however, important, because as an existing international instrument, MIPAA specifically addresses older people and enshrines a human rights approach to ageing policy.

⁵ See BAGSO's declaration on the International Day of Older Persons in 2012 (in German): www.bagso.de/publikationen/positionspapier/internationaler-tag-der-aelteren-menschen/.

⁶ See BAGSO's statement on the 2016 report by the Independent Expert: https://www.bagso.de/fileadmin/user_upload/bagso/06_Veroeffentlichungen/2016/BAGSO-Stellungnahme_Menschenrechte_Aelterer_englisch.pdf.

the worldwide promotion of the rights of older people.⁷

Towards a UN Convention on the Rights of Older Persons

With a view to better safeguarding the human rights of older people, BAGSO believes that the following aspects need to be considered:

1. A specific human rights instrument for the protection of older persons can provide an important basis for the differentiation of fundamental rights in national legislation worldwide, including in emerging and developing countries.
2. The Inter-American Convention on Protecting the Human Rights of Older Persons of 2015⁸ constitutes a possible blueprint for the discussion on a specific convention at UN level, especially since the Organization of American States includes industrialised, emerging and developing countries.
3. Yet, BAGSO rejects a restriction of the Convention's scope of protection to people above a certain age, as provided for by the Inter-American Convention
4. In Germany and other industrialised nations, greater need for action is seen when it comes to the implementation of existing rights, but even in these countries there are areas where the protection of older people is not yet sufficiently guaranteed by law. There is ageism, for instance, in working and professional life in particular, which is not prevented by the existing legal regulations. Rigid age limits for certain professions or honorary posts also fail to

(see point 2). No special rights for older people should be created, since an age-independent system of (human) rights is an essential contribution to the required elimination of stereotypical images of age.⁹ The rights enshrined in a Convention on the Rights of Older People must therefore be granted to all people universally, irrespective of their age. The particular reference to old age by the UN Convention should rather consist in defining rights whose violation affects older people particularly frequently, e.g. equal access to work and education or the preservation of independence and autonomy in vulnerable living conditions.

⁷ See the press release on the occasion of the 70th anniversary of the Universal Declaration of Human Rights in 2018 (in German): www.bagso.de/fileadmin/user_upload/bagso/01_News/Pressemitteilungen/2018/PM_70_Jahre_Menschenrechte.pdf.

⁸ The Convention is the first specific human rights instrument to protect older people. It has so far been signed by Argentina, Bolivia, Chile, Costa Rica and Uruguay.

⁹ This corresponds to a recommendation by the Commission of Experts for the Sixth Report on Older People with reference to the national legal system, see Sixth Report on the Situation of Older People in the Federal Republic of Germany – Images of Ageing in Society (2010), Chapter 11 Age Limits in Law and Images of Ageing, pp. 195 et seq. (in German).

do justice to the plurality of age. Age-related exclusion from certain financial services must also be prevented by law.¹⁰

5. A convention must oblige national legislators to enshrine in law a ban on age discrimination in all areas of life. A decline in abilities at an advanced age in individual cases cannot and must not be the rationale for general age-related inequality of treatment. Fixed age limits are therefore inadmissible and must be replaced by individual case examinations where necessary.
6. Protection from abuse in residential and family care must also be expanded. Stronger state protection mechanisms, especially those with a preventive effect, including preventive intervention options such as those in German child and youth welfare law, are urgently needed for the adult sector as well.¹¹
7. With regard to social participation, the increasing digitalisation of all areas of life is creating a new risk for older people, which is not yet sufficiently covered by law. The thinning out of analogue options for access in public

administration, to private service providers and in health care, especially in rural areas, affects people of all ages. Older people, however, are less able to compensate for these trends than younger ones because of fewer individual resources. That is why it is crucial to ensure that people have unrestricted access to goods and services regardless of their age, place of residence, personal mobility or social network. Similarly, the right to participate in elections and votes should not be linked to access to digital media.¹²

8. In order to support a self-determined life and to facilitate the most varied forms of assistance in case of limited abilities, assistive technologies and autonomous systems (robots) are increasingly available. If requested, technical support should of course also be available, financially affordable and usable for older people. This applies to technical products and systems in the health and long-term care sector in particular. At the same time, there must also be a right to self-determined ageing and good care without technical support systems. Legal regulations that would

¹⁰ Since they are not considered so-called mass business, loan agreements, for example, have not yet fallen within the scope of protection of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz, AGG*).

¹¹ With regard to "vulnerable age", the European Charter of Rights and Responsibilities of Older People in Need of Long-term Care and Assistance is also a good model for a UN Convention on the Rights of Older Persons. The Charter is available in English at: https://www.age-platform.eu/sites/default/files/European_Charter_EN.pdf.

¹² See Charter of Fundamental Digital Rights of the European Union: <https://digitalcharta.eu/wp-content/uploads/DigitalCharter-English-2019-Final.pdf>.

take both aspects into account have been lacking to date.¹³

9. Artificial intelligence, big data, algorithms and robotics, as well as the monitoring and control of human behaviour, can violate the dignity of older persons and have ageist effects. When used in decision-making processes, the underlying inclusion and exclusion criteria must be disclosed and made transparent in each case.
10. All over the world, older people make important contributions to society, whether within their families, in their neighbourhoods, at work, in politics or through voluntary work. The issues of autonomy, participation and empowerment should therefore be given great emphasis in a global Convention on the Rights of Older People.
11. BAGSO calls for ensuring the widest possible participation of older people and their representatives, including in the development of a specific human rights instrument and in its implementation and review in national legislation.

12. And finally: BAGSO believes that the human rights approach and the development perspective, which form the basis of the process of gradual implementation of MIPAA, are not contradictory. Both approaches are justified and can ideally complement each other.

Conclusion

BAGSO calls on the German Federal Government and the international community to take the next steps towards the adoption of an internationally binding legal instrument to protect the rights of older people.

This statement was adopted by the BAGSO board in March 2020.

¹³ This is also pointed out in a 2017 report by the Independent Expert on the Enjoyment of all Human Rights by Older Persons, "Robots and rights: the impact of automation on the human rights of older persons": <https://undocs.org/A/HRC/36/48>. See also the Conference Declaration of the International Expert Conference on Human Rights of Older Persons in Vienna (Vienna Declaration), 2018: <https://social.un.org/ageing-working-group/documents/tenth/events/ICHRoP%20Conference%20Declaration%20Final.pdf>.

About BAGSO

The German National Association of Senior Citizens' Organisations is a non-partisan umbrella organisation of civil society institutions in the field of senior citizens' work and ageing policy in Germany. As a representative of the interests of older persons, we consistently call on politics, society and business to offer framework conditions that allow for a good and dignified life in older age. In doing so, we also have the interests of older people of tomorrow and beyond firmly in view.

At the United Nations, BAGSO is actively involved in the development of a UN Convention for Older People. BAGSO is also a member of the Global Alliance for the Rights of Older People (GAROP), an international alliance of over 200 civil society organisations that advocates for the rights of older people. BAGSO's Secretariat for International Policy on Ageing provides information on current international developments in ageing policy and contributes the interests of civil society to international processes.

Published by

BAGSO
Bundesarbeitsgemeinschaft
der Seniorenorganisationen e.V.
German National Association of
Senior Citizens' Organisations

Noeggerathstr. 49
53111 Bonn
Germany

Tel.: +49 (0)228 / 24 99 93-0
Fax: +49 (0)228 / 24 99 93-20
kontakt@bagso.de
www.bagso.de