

QUESTIONNAIRE

Human Rights Council resolution 24/20 requested the United Nations Independent Expert on the enjoyment of all human rights by older persons to **assess the human rights implications of the implementation of the Madrid International Plan of Action on Ageing (MIPAA)**.

MIPAA was adopted at the Second World Assembly on Ageing in 2002. It requires that States take measures to address ageing in order to achieve a society for all ages and calls for the mainstreaming of ageing into national and global development agendas. It also contains recommendations for action focused on three priority areas: (i) older persons and development; (ii) advancing health and well-being into old age; and (iii) ensuring enabling and supportive environments, which are divided into specific issues, objectives and actions.

The Independent Expert prepared the questionnaire below with the objective to collect information about whether the implementation of MIPAA has enhanced the enjoyment of all human rights by older persons or whether it has had a negative impact and which rights have been affected. It also seeks to identify good practices and challenges encountered by Member States regarding the promotion and protection of all human rights by older persons in the implementation of MIPAA.

All information collected is intended to help the Independent Expert on the enjoyment of all human rights by older persons to elaborate her comprehensive report that will be presented to the Human Rights Council in September 2016.

The questionnaire should preferably be completed in English, French or Spanish by **31 July 2015**. Kindly indicate whether you have any objection for the responses provided to be made available on the OHCHR website of the Independent Expert on the enjoyment of all human rights by older persons.

Question 1:

What is the role of your organization? Do you participate in MIPAA implementation or monitoring thereof?

The European Network of National Human Rights Institutions (“ENNHRI”) coordinates almost 40 National Institutions (NHRIs) for the Protection and Promotion of Human Rights from across wider Europe in accordance with the UN-Paris Principles. ENNHRI is one of four regional groups which bring together human rights bodies from all over the world, the others being Africa, Asia-Pacific and the Americas. ENNHRI established a permanent secretariat in Brussels in 2013.

The members of ENNHRI are not responsible for implementing or monitoring MIPAA directly, but are responsible for the protection and promotion of all human rights within their jurisdictions, including for older persons. Findings from a mapping exercise of ENNHRI members in 2013¹ and a survey in 2014² showed that almost all ENNHRI members have carried out a variety of activities to protect and promote the human rights of older persons over the last five to ten years. **However, it is not clear whether MIPAA instigated this work, or whether they were influenced by their government’s commitment to MIPAA. Indeed, it is unclear if any work to improve the human rights situation of older persons in Europe was influenced by MIPAA.**

ENNHRI members work on ageing covered a wide variety of human rights issues, including the rights of older persons to social security and an adequate pension, particularly given the impacts of the economic crisis; access to and rights in long-term care; public security; the rights of older migrants and the impact of conflict situations on older persons. NHRIs used a variety of methods and approaches, including working with individual older persons, carrying out monitoring and investigations, undertaking research, providing training, advising state actors and raising awareness amongst various stakeholders in order to promote and protect the human rights of older persons.

Question 2:

Has a human rights-based approach been integrated in the implementation framework of MIPAA in your country and if so, how did this translate into concrete policies and normative actions? Are there any mechanisms to monitor and assess the impact of MIPAA implementation on the enjoyment of all human rights by older persons?

Please include information on existing data, legislations, policies, programmes and institutional mechanisms and resources allocated to respect, protect and fulfill all human

¹ ENNHRI, 2013, Mapping of Members’ Work on Older Persons’ Human Rights, http://www.ennhri.org/uploads/3/1/5/7/31578217/ennhri_report_older_persons_sept_2013.pdf,

² http://www.ennhri.org/uploads/3/1/5/7/31578217/survey_report_op_project_may_2014.pdf

*rights of older persons through the implementation of MIPAA. Please provide references and copies/ translation of relevant instruments*³.

Wider Europe is a diverse region, with significant variations in all statutory services and programmes to support and promote the human rights of all individuals, including older persons. For example, within the EU, most Member States provide a minimum guarantee pension which is usually means-tested where the persons who are entitled to the minimum guarantee pension scheme may not have been qualified for an earnings-related pension scheme or may only have accrued a small earnings-related pension. However, in some countries the current adequacy of pensions is a growing source of concern. Overall, people over 65 have an average income of 96 % (2013) of that of the population aged 0-64. In 2013, the at-risk-of-poverty rate of people over 65 varied from 5.57% in the Netherlands to 271.9% in Bulgaria (EU-28: 13.8%)⁴. Severe material deprivation among people aged over 65 ranged from less than 1% in Sweden, the Netherlands, Luxembourg, Denmark and Finland to 26.6% in Latvia, 27.5% in Romania, and as much as 50.7% in Bulgaria.

In addition, there are significant differences across social protection systems in Europe in the scope, breadth and depth of coverage of long-term care in old-age. Recent research⁵ carried out for the Directorate-General for Employment, Social Affairs and Inclusion in the European Commission found that less affluent individuals are much more likely to use informal care. While there were not sufficient data to ascertain whether this was linked with income and affordability, other research has found that access to long-term care can be challenging for those with low incomes in some countries (e.g. Serbia), both because of the cost of services themselves, and also because of the limited availability of public services and the high cost of private services as an alternative.⁶

As noted earlier, in the area of long-term care, a total of 11 ENNHRI members have written special reports in the area of long-term care for older persons, based on detailed monitoring investigations.⁷ Overall, NHRIs indicated that the care settings visited as part of each

³ For instance regarding the right to health, including primary, long-term and palliative care services; the rights to work, to an adequate standard of living, including adequate food, clothing, housing, transportation; the right to social security and social protection, including poverty strategies; the right to education, training and life-long learning, including access to new technologies; the right to legal capacity and equal recognition before the law, care and support for caregivers, among others.

⁴ <http://ec.europa.eu/europe2020/pdf/themes/2015/pensions.pdf>

⁵ ec.europa.eu/social/BlobServlet?docId=13627&langId=en

⁶ http://europa.rs/images/publikacije/05-Deprived_of_Rights_out_of_Ignorance.pdf

⁷ Austrian Ombudsman Board, 2014, Annual Report on the activities of the Austrian National Preventive Mechanism (NPM), Vienna,

<http://volksanwaltschaft.gv.at/downloads/66ouj/Report%20on%20the%20activities%20of%20the%20NPM%20-%202014.pdf>; the Federal Migration Centre of Belgium, 2005, Les soins de santé face aux défis de la diversité le cas des patients musulmans; Institution of Human Rights Ombudsman of Bosnia and Herzegovina, 2010, Special Report on Human Rights Situation of Elderly Persons, http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013020406211683eng.pdf; Equality and Human Rights Commission of Great Britain, 2011, Close to Home Inquiry, <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-home-care-older-people/download-inquiry-report>; the Office of the Commissioner for Fundamental Rights of Hungary, 2010, Projects on the Rights of the Most Vulnerable Groups: Homeless, Disabled and Elderly People of the Parliamentary Commissioner for Civil Rights

investigation had an overall high standard of care, with teams showing a great willingness to co-operate with the study team. Most had an open and positive atmosphere. However, all eleven of the NHRIs reported breaches of the rights of older persons in receipt of long-term care. The worst cases included older persons not being fed or being left without access to food and water, or in soiled clothes and sheets. Other breaches, such as a resident being left with their glasses or hearing aid out of reach, appeared to have been caused by a lack of understanding of the human rights of older persons. This indicates the need for more training and awareness-raising amongst care providers, care workers and older persons themselves about human rights and how these can be applied in long-term care settings.

This highlights how there are deficiencies in how well the human rights of older persons in Europe are protected and suggests that *binding* human rights legislation is lacking in terms of policies for older persons. Some individual NHRIs have tried to raise awareness of the need for a human-rights based approach to protect and promote the rights of older persons in receipt of long-term care (e.g. <http://scottishhumanrights.com/careaboutrights>), but these initiatives are more driven by *binding* human rights legislation that relate to all human beings, rather than by MIPAA.

There has been some formal attempt to monitor the implementation of MIPAA in Europe, both by the UNECE and by civil society organisations, funded by the UNECE.⁸ However, as noted by AGE Platform Europe, it is characteristic that more than a third of the UNECE countries did not submit a report on the application of the MIPAA in view of its 10-year review in 2012, while in many cases submitted contributions lack accountability, are inconsistent and do not provide clear links with the MIPAA priorities. Likewise, the report of the UN High Commissioner for Human Rights to the Economic and Social Council noted in

in Hungary 2008–2010,

[http://www.ajbh.hu/documents/14315/131278/Projects+on+the+Rights++of+the+Most+Vulnerable+Groups++Homeless,%20Disabled+and+Elderly+People+of+the+Parliamentary+Commissioner++for+Civil+Rights+in+Hungary+2008-2010/b6b307ae-5c0b-4a99-83a8-](http://www.ajbh.hu/documents/14315/131278/Projects+on+the+Rights++of+the+Most+Vulnerable+Groups++Homeless,%20Disabled+and+Elderly+People+of+the+Parliamentary+Commissioner++for+Civil+Rights+in+Hungary+2008-2010/b6b307ae-5c0b-4a99-83a8-91535e68b973;jsessionid=268A520AEE4804CFE84D1C954DA2E833?version=1.0)

[91535e68b973;jsessionid=268A520AEE4804CFE84D1C954DA2E833?version=1.0](http://www.ajbh.hu/documents/14315/131278/Projects+on+the+Rights++of+the+Most+Vulnerable+Groups++Homeless,%20Disabled+and+Elderly+People+of+the+Parliamentary+Commissioner++for+Civil+Rights+in+Hungary+2008-2010/b6b307ae-5c0b-4a99-83a8-91535e68b973;jsessionid=268A520AEE4804CFE84D1C954DA2E833?version=1.0); The Seimas

Ombudsmen's Office of the Republic of Lithuania, 2015, Sample Care Home Report,

[http://www.lrski.lt/images/dokumentai/2015-09-](http://www.lrski.lt/images/dokumentai/2015-09-14%20%20%20Ataskaita%20dl%20mogaus%20teisi%20padties%20Kauno%20apskritis%20suaugusi%20asmn%20globos%20staigose%20Nr.%2074.pdf)

[14%20%20%20Ataskaita%20dl%20mogaus%20teisi%20padties%20Kauno%20apskritis%20suaugusi%20asmn%20globos%20staigose%20Nr.%2074.pdf](http://www.lrski.lt/images/dokumentai/2015-09-14%20%20%20Ataskaita%20dl%20mogaus%20teisi%20padties%20Kauno%20apskritis%20suaugusi%20asmn%20globos%20staigose%20Nr.%2074.pdf); the Commission Consultative des Droits de l'Homme of

Luxembourg, 2013, Rapport sur les droits des personnes âgées fragiles en institutions de long séjour, <http://www.ccdh.public.lu/fr/avis/2013/rapport-personnes-agees-en-institutions-version-finale.pdf>;

the Netherlands Institute for Human Rights, 2015, still unpublished; the Northern Ireland Human Rights

Commission, 2012, In Defence of Dignity: The Human Rights of Older People in Nursing Homes,

<http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>;

Amity, 2013, Deprived of Rights out of Ignorance (with co-operation from The Protector of Citizens of the Republic of Serbia), [http://europa.rs/images/publikacije/05-](http://europa.rs/images/publikacije/05-Deprived_of_Rights_out_of_Ignorance.pdf)

[Deprived_of_Rights_out_of_Ignorance.pdf](http://europa.rs/images/publikacije/05-Deprived_of_Rights_out_of_Ignorance.pdf); and the Office of the Ukrainian Parliament Commissioner for Human Rights, 2014, Realisation of the national preventive mechanism in Ukraine.

⁸ <http://www.unece.org/pau/pub/mipaa.html>; <http://www.monitoringris.org/index.php>

July 2011 that implementation of the MIPAA ‘does not systematically consider linkages to the obligations of the States under international human rights instruments’.⁹

Question 3:

Have the needs of specific groups of older persons been taken into consideration in the process of implementation of MIPAA and if so, how?

Please provide information about existing data, legislations, policies, programmes and institutional mechanisms, and resources allocated regarding the protection and promotion of the rights of older women, persons with disabilities, persons of African descent, individuals belonging to indigenous peoples, persons belonging to national or ethnic, religious and linguistic minorities, rural persons, persons living on the streets and refugees, among other groups. Please provide references and copies/translation of relevant instruments.

Older persons are an extremely heterogeneous group, to the extent that they form a tenuous group at best. As such, identifying specific groups of older persons, let alone ascertaining the extent to which they have been taken into consideration in the process of implementing MIPAA represents a significant challenge.

Nevertheless, it is possible to identify older individuals who may have particular needs or wishes that require specific, additional support: older persons with disabilities and/or dependent on help with basic activities of daily living and/or instrumental activities of daily living;¹⁰ older persons at the end of their lives; GLBTI; prisoners; those living below the poverty line; older women; migrants; asylum-seekers, refugees and displaced older persons; socially isolated older persons and those living in remote locations.

It is important to note that anti-discrimination provisions in existing UN treaties utilise a ‘single ground approach’. For example, the ICERD prohibits race discrimination only and does not cover sex; therefore, it is not possible to lodge an individual complaint to the monitoring committee on both sex and racial grounds. While Article 14 of the ECHR and Protocol 12 on equality and non-discrimination prohibit discrimination on a large number of grounds, making a claim on more than one ground theoretically possible, the ECtHR does not use the terms multiple discrimination. Furthermore, the ECHR does not mention healthcare in any of its provisions. While issues linked to healthcare might be subsumed under other relevant provisions, a violation of Article 14 – which is a provision that can only be invoked when the matter falls within the ambit of another ECHR right – is difficult to claim in cases where access to healthcare is at stake.

⁹ http://www.age-platform.eu/images/stories/AGE_Council_decisions_on_AGE_work_an_UN_discussions_on_the_rights_of_older_people_21_Nov_2012_for_website.pdf

¹⁰ <https://www.caring.com/articles/activities-of-daily-living-what-are-adls-and-ialds>

The EU legal system also prohibits discrimination on six grounds: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. However, age discrimination is currently only protected under the Employment Equality Directive 2000/78/EC and so does not relate to access to long-term care or rights while in care. Age discrimination is rarely addressed in regional and national legal provisions and when it is, it does not apply to all sectors and/or provides for several exceptions, as is the case with the EU legislation to combat discrimination on the ground of age which covers only discrimination in employment and occupational training. In addition, there is little protection against multiple and/or intersectional discrimination in international and EU human rights law.¹¹ **While stronger equality legislation has been planned for many years, the extremely limited legal protection in this regard suggests that MIPAA has had little influence in protecting the rights of older persons in terms of equality, let alone specific groups of older persons.**

Throughout Europe, there is considerable diversity in the policies and legislation to support older persons that require specific/additional support. For example, the Active Ageing Index shows that Nordic countries have programmes and policies in place to sustain employment levels among older workers who are reaching retirement and also the provision for income security in their retired population, whereas lower-income central and eastern European countries as well as Greece have faced a greater challenge and need to address how they can make their policies to promote independent living, increase participation in society and create employment opportunities for older persons.¹² This suggests that there may be a need for new legislation to promote the equal rights of all older persons.

Question 4:

Have older persons been informed about MIPAA and if so, how? How are older persons participating in the implementation of MIPAA including in decision-making about MIPAA implementation?

Please provide information about existing data, legislations, policies, programmes and institutional mechanisms and resources allocated that ensure the full and effective participation of older persons in decision-making regarding MIPAA implementation, assessment and follow-up. Please provide reference and copies/translation of adopted instruments.

A number of initiatives at the European level seek to inform older persons about their rights, particularly in long-term care. For example, the European Commission produced a booklet to help individuals understand their rights under EU law.¹³ Similarly, as noted earlier, AGE Platform Europe developed a charter to inform older persons about their rights when accessing and in receipt of long-term care. **However, there have been few formal and**

¹¹ http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf

¹² <http://www1.unece.org/stat/platform/display/AAl/Active+Ageing+Index+Home>

¹³ http://ec.europa.eu/justice/discrimination/files/rights_against_discrimination_web_en.pdfS

direct plans to inform older persons about MIPAA at the European level and no evidence that any policies on older people's participation has been influenced by MIPAA.

At national level, NHRIs also seek to inform older persons, as all citizens, about their rights and encourage them to participate in the development of policies related to the implementation of MIPAA. When working on projects and special initiatives to promote and protect the human rights of older persons, NHRIs seek to involve older persons directly, as well as to consult older persons' organisations. **However, according to their mandate, NHRIs can only promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which their State is a party. As MIPAA is not a legally binding instrument, the powers of NHRIs to encourage their government to implement it is limited.**

Question 5:

What impact has MIPAA implementation had on equality and non-discrimination of older persons?

Please provide information about existing data, legislations, policies, programmes and institutional mechanisms and resources allocated that ensure equality and non-discrimination. Please provide reference and copies/translation of adopted instruments.

As noted in the UNECE's Synthesis Report on the implementation of the Madrid International Plan of Action on Ageing in the UNECE Region, many countries have adopted anti-discrimination legislation or have relevant articles prohibiting age-based discrimination in their constitution (AUT, AZE, CAN, CZE, FIN, IRL, ISL, LTU, MKD, NLD, NOR, SRB, SVK, SWE, USA). Some have created additional institutions for oversight such as an ombudsperson (LTU, NOR, SRB, SWE) and the Norwegian Equality Tribunal. NGOs have played an important role in raising awareness about issues of older people's discrimination and abuse (e.g. SRB).¹⁴ Several countries have also prescribe equal treatment and non-discrimination based on age or disability into the labour legislation (AZE, GBR, IRL, MDA, POL, RUS) and adopted acts on gender equality and laws prohibiting discrimination based on gender (ESP, GRC, ISL, LTU, NOR, SRB). Furthermore, several countries have developed or are in the process of developing a National Positive Ageing Strategy.¹⁵ As noted by the EU's Fundamental Rights Agency, the implementation of the proposed Equal Treatment Directive in the EU would further extend protection against disability.

¹⁴

http://www.unece.org/fileadmin/DAM/pau/age/Ministerial_Conference_Vienna/Documents/Synthesis_report_19-11-12.pdf

¹⁵ <http://www.afeinnovnet.eu/news/european-commission-publishes-results-call-active-ageing-strategies>

However, many discriminatory practices continue to exist. For example, age-based employment policies, such as mandatory retirement, a maximum age limit for recruitment, and age-based workforce layoffs or redundancies are common and legal practices. In addition, research by Prof. Israel Doron and colleagues has found that older persons may have some challenges in bringing cases of discrimination to the courts, particularly international courts. However, in the majority of elder rights cases in the European Court of Justice, the decision was in support of older persons' rights, finding that indeed the rights of older persons were infringed.¹⁶

Question 6:

What impact has MIPAA implementation had on the fulfillment of the right of older persons to an adequate standard of living?

Please provide information about existing data, legislations, policies, programmes and institutional mechanisms and resources allocated that ensure the right of older persons to an adequate standard of living. Please provide reference and copies/translation of adopted instruments.

Whilst the 2012 EU28 average of people over 65 years old at risk (19.3%) is lower than the rate for people under 65 (26.9%), the rate for the older category varies widely (from 6% in Luxembourg to almost 60% in Bulgaria) and for different groups (e.g. more than 25% on average for women over 75). However, elderly women and the very old tend to face much higher risks in some countries.¹⁷

Question 7:

Please provide examples of best practices from a human rights perspective in your country in the implementation, monitoring, review and appraisal of MIPAA.

Please explain why it is considered a best practice and provide concrete examples.

Some examples of best practice throughout Europe on the promotion and protection of the human rights of older persons have been collated by the Council of Europe in their 2014 recommendations to Member States.¹⁸

Furthermore, there are numerous examples of best practice in the work of European NHRIs in monitoring and promoting the human rights of older persons, as outlined in the attached document. **However, there is no evidence that any of these were influenced in any way by MIPAA; it is not referred to in any proposals to introduce new initiatives, either at the European or national level.**

¹⁶ http://social.un.org/ageing-working-group/documents/sixth/Presentation_Doron.pdf

¹⁷ http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion

¹⁸ <https://wcd.coe.int/ViewDoc.jsp?id=2162283&>

Question 8:

Please provide information about the main challenges (such as institutional, structural and circumstantial obstacles) your country faces at the various levels of government (communal, provincial and national etc.) to fully respect, protect and fulfill the human rights of older persons in the implementation of MIPAA.

Please explain and provide concrete examples.

The central challenge that different countries in Europe face in respecting, protecting and fulfilling the human rights of older persons is the rising cost related to the increasing proportion of the population aged 65 and over (particularly for pensions and long-term care) and the need to put in place sustainable systems for delivering and monitoring high quality care. At a European level, countries are being encouraged to develop policies to promote active ageing.¹⁹ However, there is a concern that this may serve to marginalize older persons who do not remain as active as possible throughout the course of their later lives.

¹⁹ ec.europa.eu/social/BlobServlet?docId=12633&langId=en