

**Submission to the**

**United Nations Independent Expert on the enjoyment of all human rights by older persons**

**Responses to the Independent Expert’s call for contributions concerning her forthcoming thematic report to the 51st session of the Human Rights Council on the human rights of older persons deprived of their liberty**

**1 April 2022**

**About the Submitting Organization**

DIGNITY is an independent human rights and development organization. Our vision is a world free of torture and other cruel, inhuman, or degrading treatment.

Founded in 1982, DIGNITY is one of the world’s first anti-torture NGOs and specialized treatment centres for torture survivors. For 40 years, DIGNITY has been a leading civil society force in the global fight against torture and today our programming spans the health, legal and political sectors.

DIGNITY is headquartered in Copenhagen, Denmark, has country offices in Jordan and Tunisia, and currently employs around 140 staff globally. We have active partnerships with more than 30 local and international NGOs and research institutions around the world.

DIGNITY has projects in Africa, the Middle East, Asia, Eastern Europe, and Central America, where we work in close partnerships with human rights defenders, civil society organizations and, where possible, government authorities. DIGNITY is a member of the World Health Organization’s Violence Prevention Alliance, and contributes to the work of the UN Sub-Committee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).

**Submitting Organization Contact Details**

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| Type of Stakeholder (please select one) | Member State  Observer State  Other (please specify) |
| Name of State  Name of Survey Respondent | DIGNITY – Danish Institute against Torture  Grant Shubin, Legal Advisor |
| Email | grsh@dignity.dk |
| Can OHCHR attribute responses to this questionnaire to the submitting stakeholder\*?  \*On OHCHR website, under the section of IE on the Rights of Older Persons | **Yes**  Comments (if any): DIGNITY consents to having this submission and the responses contained herein attributed to DIGNITY and to having the submission posted online on the OHCHR website. |

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# Introduction

The following information is respectfully submitted to facilitate the Independent Expert’s investigation into the specific experiences of older persons deprived of their liberty.

This report aims to provide the Independent Expert with information concerning the specific risks, legal frameworks, and good practices concerning the situation of older persons deprived of liberty.

The sources drawn on in drafting this submission come from DIGNITY’s experience in working with partners in several regions and from written input received from some of our partners, namely: the Philippines Commission of Human Rights, the National Commission of Human Rights in Jordan and MIDRIFT HURINET in Kenya.

# Answers to Select Questions

1. What are the key human rights risks and violations affecting older persons deprived of their liberty, considering different intersectional factors?

*General Human Rights Risks*

When deciding to deprive an older person of their liberty in any type of facility, special attention should be given to applying the principles of necessity and proportionality in light of the increased vulnerability due to age and other intersectional factors. These considerations are critical at every stage of the criminal justice process (pretrial, sentencing and post-sentencing) as well as at every decision concerning the deprivation of liberty in any other setting (social care, psychiatric, immigration detention etc.). **We recommend that the Independent Expert’s report further highlight that non-custodial alternatives should be considered at every stage of deprivation of liberty procedures (not just at the post-sentencing or release stages)**.

Detained elderly persons (in any form of detention) are not a homogeneous population. Structural inequities influence the prospect of aging and the prospect of being deprived of liberty in multiple ways. Advanced age is an additional risk factor that must be considered with other intersectional factors, such as sex, gender, ability, race, and class. For example, ageing women in detention have an unmet need for menopause-related symptom management. Symptom-relieving medications and medical/social support are rarely available in detention be it immigration or penitentiary detention. For those in penal detention, menopause symptoms may be exacerbated by certain conditions that disproportionately affect detained populations, such as substance use disorders, HIV, etc. **Thus, considerations of the multiple and intersecting forms of risk and vulnerability should take place at all stages, in particular with respect to the intersection of age and gender, in all places to generate more holistic approaches towards meeting the needs of older persons in society and when deprived of liberty. This could be further elaborated in the Independent Expert’s report.**

It is a fact that detention worsens health for detainees in general and those who are in frail conditions (such as older persons) in particular. Older persons will have more health problems than younger ones thereby presenting a bigger burden on the health system (staffing, funding, etc.) in any detention centre (immigration, prison, etc.). As an example, one estimate from the USA (Maryland) puts the average annual cost of an older prison detainee (above 55 years) at USD 68,000 as opposed to just USD 22,000 for younger detainees.[[1]](#footnote-2) **We recommend that action and policy be evidence-based and accordingly that cost-benefit analyses be conducted with regards to the detention of older persons.**

Older persons are more likely to need palliative care which is rarely offered in detention or when offered may be of lower quality than in the outside community. This may pose a violation of the person’s right to health, the principle of equivalence of care, and may amount to ill-treatment. **We recommend considering the necessity and proportionality of detaining those in need of palliative care, examining non-custodial alternatives at all stages, including serving sentences in hospitals or other facilities and compassionate release.** Not only is this humane but would also save money in the case of penal detention. Evidence shows that recidivism among senior detainees is much lower than among other detainees. For example, in Maryland, USA, recidivism among older detainees is only 3% compared to the national average of 66%.[[2]](#footnote-3)

It is well-documented that the prevalence of mental health problems among jail and prison detainees is significantly higher than in the community. Social isolation is a risk factor for poor mental health and older detainees are at higher risk of social isolation because of their minority status. **The medical assessment of persons entering detention (be it immigration, prison, etc.) should occur systematically and should include a particular focus on persons requiring special attention such as elderly persons. We recommend sensitizing persons who conduct initial medical assessments to the special needs of the elderly.**

It should be noted that most published data on detained elderly persons is from a handful of high-income, Western countries. The special vulnerabilities of elderly persons may be different in low and middle-income countries especially where there is no tradition of institutionalizing elderly persons and where they are usually cared for by family members. **There is a need to learn more about the characteristics, health issues and needs of detained persons in low and middle-income countries.**

*Human Rights Risks Within Criminal Justice Procedures*

Generally, there is a lack of consideration of non-custodial measures, especially at the pretrial and sentencing stages. As mentioned more broadly above, intersectional approaches and attention to vulnerability are crucial at all stages. For older populations this means strict adherence to the principles of necessity and proportionality as well as evaluating the availability of alternatives to detention. For more on this issue, please see DIGNITY's Guidance Document on reducing overcrowding in the context of Covid-19, which includes specific recommendations that may be applied beyond the pandemic.[[3]](#footnote-4)

Additionally, there is a general lack of individual assessment during admission procedures and at regular intervals during detention to address specific needs and to classify individuals within relevant security regimes. For older people, this is especially relevant when they are serving long sentences in high security regimes.

At the earliest stages of the criminal justice process, there is a lack of reasonable adjustments and support for older persons to equally participate in criminal trial proceedings. The many human rights put at risk when a person has their liberty deprived require, at minimum, conveyance of effective information about the person’s rights as well as effective access to basic legal safeguards during first hours of custody, including access to a lawyer, access to a doctor, and notification of family.

Finally, in many contexts, imprisonment is often disproportionately imposed on persons with mental health disabilities or challenges, which may disproportionally affect older persons.

*Human Rights Risks Within Social Care/Psychiatric Facilities*

The nexus between age and disability creates multiple layers of discrimination. Often older persons with disabilities do not benefit from the protective legal framework for the rights of people with disabilities and instead are seen as “just being old”.

For example, in some contexts where mental health institutions are broadly intended to serve a whole population (rather than just a nation’s elite), the lack of housing and independent living support leads to institutionalization of many older persons. Within such institutions older persons may suffer unmet needs on account of limited human and financial resources and poorly trained staff. In such circumstances, there is a high risk of ill-treatment, especially in terms of neglect, contacts with the outside world and activities, as well as the overuse of restraints (physical or chemical).

Moreover, formal decisions to place a person in social/psychiatric care are irregularly reviewed, putting older persons at an increased risk of long-term institutionalization. Older persons may need support in following proceedings relating to the deprivation of their liberty. **Autonomy, independence, and legal capacity (including informed consent) are crucial and relevant supportive measures and must be provided during such proceedings.**

*Human Rights Risks Within Immigration Detention*

Immigration and border-enforcement settings are generally devoid of intersectional approaches to necessity and proportionality with respect to detaining older persons. **Immigration offices must prioritize considering alternative non-custodial immigration processing measures in accordance with older persons’ specific condition and needs.**

Additionally, the **non-refoulement principle should be applied in cases where an older person will not be able to receive the necessary care and treatment if deported to another country.**

1. Please provide figures and data on older persons deprived of their liberty. Has the number of older persons deprived of their liberty increased or decreased over the past decade?

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1. What kind of specific measures have been taken and implemented concerning older persons deprived of their liberty in the context of the COVID-19 pandemic?

Please see DIGNITY's Synthesis of Global guidance and recommendations on how to prevent and manage COVID-19 in prisons,[[4]](#footnote-5) Guidance Document on reducing overcrowding in the context of Covid-19,[[5]](#footnote-6) and Global Guidance on Preventive Monitoring during the Covid-19 pandemic,[[6]](#footnote-7) which include examples of good practices.

1. Could you give us an overview on the national and local legal frameworks which prevent and protect older persons deprived of their liberty from human rights violations? Are there effective and available national monitoring and accountability mechanisms? Please provide a detailed answer with supporting information/documents.

Overall, national legal frameworks fail to address the specific needs of older persons, as there are usually no special provisions. There appears to be little attention in the law towards older persons deprived of liberty as a group in a situation of increased vulnerability. This translates to inadequate policies and practice. **We recommend the strengthening of relevant national and local legal frameworks to more comprehensively address the rights and vulnerabilities of older persons deprived of their liberty.**

Kenya stands out as a good example. Its constitution defines older persons as over 60 years old, while Article 12 (3) (f) of Kenya’s Persons Deprived of Liberty Act states that a competent authority shall ensure that the older members of society deprived of liberty are held in accommodation appropriate to their special needs and age.

Regarding prisons, it must be noted that the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) do not specifically mention elderly detainees. The rules only refer to detainees who may have “special needs” (Rules 2.2 and 25) and state in Rule 109.2 that “prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.” While a subset of older persons may fit within this category, **the growing trend of incarcerating older persons requires specific attention to the protection of the rights and needs of older persons detained in carceral settings.**

The number of countries living up to international standards of independent monitoring of places of detention is increasing. DIGNITY works with national prevention mechanisms (NPMs) and other monitoring bodies to support their work on the prevention of torture and ill-treatment. **It is vital that NPMs’ standard monitoring practices take into account age and intersectionality and address the risks that older persons face in detention.** For more information, please refer to DIGNITY’s Monitoring Health in Places of Detention manual.[[7]](#footnote-8)

1. Please share examples of good practices on how to ensure that older persons deprived of their liberty can exercise their human rights.

Input from DIGNITY’s partners reflect that examples of good practices are rare and varied. However, the following two examples highlight an overall approach of attention to the specific situation and needs of older persons in situations of deprived liberty.

* A correctional facility in Jordan contains a separate wing with adjustable beds suitable for elderly detainees.
* In Denmark, prison sentences can be carried out (partially or fully) at a hospital, family care, own home or in an institution based on varied criteria, one of which is age.

1. H. Reese, *What Should We Do About Our Aging Prison Population,* JSTOR Daily – Politics and Government, 17 July 2019, <https://daily.jstor.org/what-should-we-do-about-our-aging-prison-population/.> [↑](#footnote-ref-2)
2. TRC Staff, *Paroling Grandpa: Study Finds 3% Recidivism Rate Among Elderly Ex-Inmates*, The Crime Report, 19 November 2018, https://thecrimereport.org/2018/11/19/paroling-grandpa-study-finds-3-recidivism-rate-among-elderly-ex-inmates/. [↑](#footnote-ref-3)
3. *See*  DIGNITY, *Guidance Document on reducing overcrowding in the context of Covid-19,* <https://www.dignity.dk/wp-content/uploads/DIGNITY-COVID19-Guidance-Document-on-Non-Custodial-Measures_ONLINE.pdf>. [↑](#footnote-ref-4)
4. DIGNITY, *Synthesis of Global guidance and recommendations on how to prevent and manage COVID-19 in prisons,* [Synthesis of Global guidance and recommendations on how to prevent and manage COVID-19 in prisons - DIGNITY - Danish Institute Against Torture](https://www.dignity.dk/en/nyheder/global-guidance-and-recommendations-on-how-to-prevent-and-manage-covid-19-in-prisons/) [↑](#footnote-ref-5)
5. DIGNITY, *Guidance Document on reducing overcrowding in the context of Covid-19,*  <https://www.dignity.dk/wp-content/uploads/DIGNITY-COVID19-Guidance-Document-on-Non-Custodial-Measures_ONLINE.pdf>. [↑](#footnote-ref-6)
6. DIGNITY, *Global Guidance on preventative monitoring during the Covid-19 pandemic*, <https://www.dignity.dk/wp-content/uploads/GLOBAL-GUIDANCE-ON-PREVENTIVE-MONITORING-OF-PLACES-OF-DETENTION-DURING-THE-COVID-19-PANDEMIC-A-PRACTICAL-TOOL.pdf>. [↑](#footnote-ref-7)
7. DIGNITY, *Monitoring Health in Places of Detention*, [DIGNITY launches a manual on monitoring health in places of detention - DIGNITY - Danish Institute Against Torture](https://www.dignity.dk/en/nyheder/dignity-launches-a-manual-on-monitoring-health-in-places-of-detention/) [↑](#footnote-ref-8)