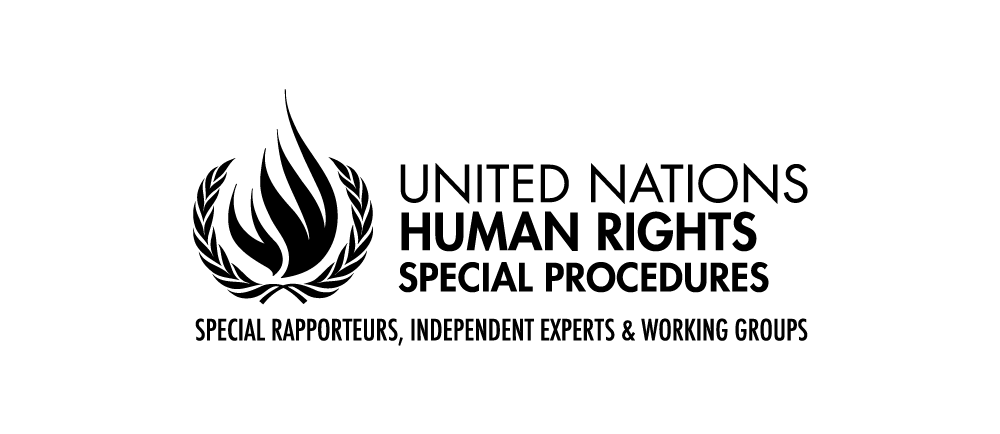
### **Check against delivery**



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

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UNITED NATIONS HUMAN RIGHTS COUNCIL

51st session

President,

Excellences,

Distinguished delegates,

Ladies and Gentlemen,

It is an honor for me to address you in person today in my capacity as Independent Expert on the enjoyment of all human rights by older persons. I look forward to the continued exchange with States, civil society organizations, national human rights institutions, United Nations agencies and all stakeholders during this interactive dialogue. From the outset, I would like to thank all the stakeholders who have engaged with me over the past year. I also would like to express my warm thanks to all stakeholders who have shared contributions to the call for inputs for the preparation of the thematic report that I will present today, as well as those who participated in the online consultations to collect information about older persons deprived of liberty.

While some meetings remained online during my second year as Independent Expert, I participated in person in several events on different topics related to the human rights of older persons, including the twelfth session of the Open-Ended Working Group on Ageing. Resuming in-person engagement also allowed me to meet with older persons, making it possible to hear about their lived realities and human rights concerns more directly.

Excellences,

Let me present to you my thematic report, in which I examine the human rights of older persons deprived of liberty in three specific situations under which States have responsibilities under international human rights law. These include situations when older persons commit legal or criminal offenses; when they are detained due to their migration status; and when they are under the control and supervision of institutions, caregiving arrangements, or under legal guardianship in the context of care.

The right to personal liberty is a core human rights in older age. International human rights law bestows the right to personal liberty and security, without any distinction or discrimination. Places of detention include places where individuals may be deprived of liberty, such as prisons, pre-trial detention facilities, police stations, social care establishments, psychiatric institutions and hospitals, mental health and immigration detention centres. The right to personal liberty is not an absolute right and persons can be deprived of it in circumstances clearly established under international human rights law. Such restrictions should be necessary and proportionate to the pursuit of a legitimate objective. It is however considered arbitrary when unjustified, disproportionate, or discriminatory, or where due process has not been afforded.

An older person may be considered deprived of liberty when confined to a specific space or placed in a public or private institution without permission to leave at will, against the wishes of the older person or without their free and informed consent.

In the context of criminal justice, States must protect and respect the human rights of older persons, ensure they are treated with dignity during their detention and their specific needs with respect to their age, health, and disability status are taken into consideration.

In the context of migration-related detention, the deprivation of liberty for individuals, including older persons should be a measure of last resort and may only be applied on a legitimate basis. Failure by States to provide special care and assistance to older persons detained in this context may render their detention unlawful.

When older persons are deprived of their liberty in the context of care, States shall take appropriate measures to protect their right to liberty, including by non-State actors and in private settings (such as private care, health facilities and private homes). Though older age must not be considered as a ground for the limitation of rights, the autonomy and independence that older persons enjoyed earlier in life are often denied in their older age. The right to personal liberty for older persons must be understood in the context of a person’s right to autonomy and independence. The Convention on the Rights of Persons with Disabilities offers a solid legal framework that is applicable to older persons with disabilities deprived of liberty. Respecting the free and informed consent to one’s choice of treatment, services and care is also crucial to prevent deprivation of liberty of older persons.

Ladies and Gentlemen,

Ageism and age discrimination are underlying to most situations of deprivation of liberty for older persons. Ageist attitudes are persistent worldwide, leading to discriminatory laws, policies, and practices that hinder the right of older persons to personal liberty. As a heterogenous group, older persons are not all equal when facing deprivation of liberty. Older age often combined with socioeconomic factors, such as poverty and lower levels of formal education, might have a correlation with the likelihood for someone committing an offence.

Within the context of care, the lack of public policies catering for older persons and the abandonment by families contribute to the deprivation of liberty. In care settings, such deprivation is often justified as being in the “best interests” of the older person, to ensure their security or to protect them from self-harm or harming others. The restriction or denial of older persons’ personal liberty and legal capacity codified on the basis of “social duty of care”, rely on ageist and ableist stereotypes that may further generate a lack of self-esteem and disempowerment, and undermines an older person’s perception of and ability to exercise their autonomy and independence.

Excellences,

Data about older persons deprived of liberty in the context of care remains scare and unevenly collected in many countries. Without laws and policies implementing monitoring mechanisms that will assess and determine the status of deprivation of liberty of these persons on a case-by-case basis, older persons’ lived realities will remain invisible.

Ladies and Gentlemen,

Given the absence of an international comprehensive human rights instrument on older persons, national legal and policy frameworks fail to effectively address the specific needs of older persons. Laws, especially “mental health laws” or “safeguard laws” that apply to care settings, such as care arrangements of older persons living in their own home, with their families or within their communities, must respect older persons’ autonomy, independence.

In the criminal justice context, I identified promising practices to offer alternative solutions for older persons with minor offense convictions, such as house arrest for persons aged 70 or above with electronic monitoring or compassionate or early conditional release for older persons based on their age, time served and their health status.

In care settings, the development of care arrangements through adequate financial means would allow older persons to choose their place of residence and guarantee their right to live in dignity. While for many older persons family care is preferred, adequate, affordable and quality parallel support services should be provided to family members and informal caregivers to prevent any deprivation of their liberty.

Monitoring practices and access to justice should also be made available for older persons in situations of deprivation of liberty. Independent monitoring of places of deprivation of liberty is recognized as one of the most effective preventive measures to protect the rights of older persons. States have an obligation not only to prevent and punish human rights violations in State-managed institutions, but also to take all necessary measures to protect older persons from violations of such rights by non-State actors. They must investigate allegations of violations on older persons, including of the right to life, arbitrary detention and torture and other ill-treatment. Investigations should be effective, prompt, thorough and impartial

Excellences,

As I reported exactly one year ago, I was about to undertake my first official country visit to Finland and today I am pleased to report on the ten-day visit that took place in October 2021. I would like to sincerely thank the Government of Finland for the excellent cooperation in ensuring the success of our mutually first full-fledged country visit by a mandate holder. I am also grateful to the Human Rights Centre and the Office of the United Nations High Commissioner for Human Rights, as well all other interlocutors for their availability and support.

Finland has a comprehensive social protection system, with care and social services currently undergoing major reforms. With the reforms, the Government can adjust the legislation in the areas of legal capacity, health, and social care, and embrace the paradigm shift to see older persons as rights holders. The goals for the future should be the inclusion of the diversity of the older persons and a person-centred approach. During my visit, I was briefed on the Rai assessment instrument, which will become a mandatory tool by 2023 and will provide and gather comprehensive data on health and social services, including for older persons. As always, I believe that the best outcomes always place older persons or their representatives at the centre of their care. Such approach would allow them to have the last word about the treatments which concern them. In general, I wish to commend Finland for its considerable efforts to include older persons in society. I hope my report will further assist the country to continue advancing towards the establishment of a truly inclusive and age friendly society.

I was encouraged by the continued work of Finland’s long-standing monitoring mechanisms of the various ombudspersons. as well as the Finnish National Human Rights Institution, with its Human Rights Centre, Human Rights Delegation, and the Parliamentary Ombudsman.

Despite all the positive aspects, an urgent need for legal safeguards for services for older persons in health and social services remains. Beyond procedural provisions to restrictions of fundamental and human rights, there are currently no provisions on promoting the right to self-determination and on restrictive measures for health and social services of older persons.

The provision of services should take into account specific needs of older persons and provide them with culturally sensitive health and care services, especially those of LGBTI, indigenous or migrant backgrounds, and persons belonging to linguistic, religious or ethnic minorities. Persons with intellectual and/or psychosocial disabilities, including dementia should have the right to personal assistance.

To provide better overall protection to older persons and in the absence of a specific Convention, older age and a life cycle approach should be mainstreamed in all human rights themes related to gender, indigenous people, persons belonging to national or ethnic, religious, and linguistic minorities, violence against women, business and human rights, disabilities, refugees and internally displaced persons. I encourage Finland to include older persons’ enjoyment of their human rights as part of the development cooperation priority areas.

Ladies and Gentlemen,

I look forward to positive engagement with more States as country visits become more regular nowadays. Recently, I was able to undertake my second official country visit to Nigeria and I am preparing to undertake my third country visit to Bangladesh in November of this year. I am also thankful for the Dominican Republic for accepting a visit in 2023 and for the Republic of Moldova for reiterating its interest in receiving the mandate. Following the dramatic impact of the COVID-19 pandemic on the rights of older persons, it remains crucial for Special Procedures mandate holders to continue to gather first-hand evidence and exchange on what practical lessons can be drawn.

I very much look forward to our interactive dialogue today and thank you all for your attention and support.

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