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**Human Rights of Older Persons
and Long-Term Care Project:
The Application of International
Human Rights Standards to
Older Persons in Long-Term
Care**

February 2017

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List of Acronyms

CAT	United Nations Convention Against Torture
CDHROP	Chicago Declaration on the Rights of Older Persons
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECROP	European Charter of the rights and responsibilities of older people in need of long-term care and assistance
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights
ENNHRI	European Network of National Human Rights Institutions
ESC	European Social Charter
EUCFR	European Union Charter of Fundamental Rights
FRA	European Union Agency for Fundamental Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MIPAA	Madrid International Plan of Action on Ageing
NHRI	National Human Rights Institution
PACE	Parliamentary Assembly of the Council of Europe
RESC	Revised European Social Charter
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNPOP	United Nations Principles for Older Persons

Executive Summary

This report reviews international human rights treaties relevant to the promotion of the human rights of older persons in receipt of, or with the potential to receive, long-term care in Europe. The report aims to provide a starting point for the standards that will guide the monitoring work to be carried out by the six representative countries on the human rights situation of older persons during the pilot phase of ENNHRI's *Human Rights of Older Persons and Long-term Care Project* (the Project).

International human rights law provides the overarching framework for the protection and promotion of the human rights of older persons – it lays out the standards and the approach, which domestic law should then implement. International law relevant to the rights of older persons is complex and presents challenges for ensuring that the human rights of older persons are upheld. The European Convention on Human Rights has been incorporated into the legislation of all member states, and therefore carries significant weight in legal terms. For the purposes of the Project, its content (and interpretation by the European Court of Human Rights) should be paid particular attention over other international treaties. However, it is narrow in scope; it focuses largely on civil and political rights, rather than economic, social and cultural rights central to the day to day lives of older persons.

Standards set out in other international and regional human rights treaties, including in particular the UN's International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the Convention on the Rights of Persons with Disabilities, as well as the Council of Europe's Revised European Social Charter, outline the expectations of states parties in relation to the rights of older persons (with disabilities in the case of the CRPD).

International human rights standards do not provide older people with an explicit right to long-term care. However, articles in various treaties do contain provisions on the **right to equal access to healthcare services** (including long-term residential care), and assurances that **care services should be affordable**, through the provision of social protection if necessary. The interpretation of international and regional treaties is not entirely consistent on the issue of whether older persons should have a choice of long-term care service. The Committee on the Rights of Persons with Disabilities has confirmed that detention on the grounds of disability is incompatible with the CRPD, indicating that older persons with a disability should not be admitted into residential care against their will. However, to date, other treaty bodies and the European Court of Human Rights, have adhered to a different interpretation of this issue. As such, the extent to which older persons in Europe have the **right to a choice of long-term care setting** is unclear.

While in care, a number of human rights treaties expressly protect **the right to life** and to be **free from torture and cruel and degrading treatment**, including a

positive obligation on states to take reasonable steps to protect the right to life and freedom from torture. This includes ensuring that the physical environment is safe and precautions are taken to ensure the lives of residents are not at risk. However, there is a lack of clarity as to whether international treaties adequately protect older persons from physical, emotional, psychological, financial and sexual abuse, or whether some forms of abuse fall short of the high threshold required for a breach.

Older persons are also afforded the **right to liberty and freedom from restraint** under international human rights legislation, though there are different interpretations of the CRPPD and EHCR as for choice and autonomy. The **right to choice, autonomy, legal capacity and equality before the law** is strongly protected, providing for the right for older persons in care to have independence and choices in care, and to be included in decisions affecting their lives and care. According to the CRPD, full legal capacity must also be recognised at all times, including the right to make decisions that are considered to have negative consequences, though Council of Europe standards permit the restriction of legal capacity if certain conditions are fulfilled and safeguards put in place. The **right to dignity** is reasonably well protected, if often poorly-defined, often relating to freedom from cruel and degrading treatment and the right to privacy and family life, though civil society guidance defines dignity as respect for each individual's welfare.

The right to **privacy and family life** extends to respect for an individual's modesty, correspondence, data, physical and psychological integrity and discussions about care. The right to privacy and family life provides for older persons to remain in contact with family, a right which care homes must facilitate, including spouses who wish to live together. The right to **participation and social inclusion** extends to older persons in care, including the right to information, participation in society and cultural activities and involvement in decisions affecting daily life and healthcare. The right to **freedom of expression, freedom of thought, conscience, beliefs, culture and religion** includes the right to receive and impart information in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.

The **right to the highest attainable standard of physical and mental health** provides for the right for preventative, curative and rehabilitative facilities and services to be made available without discrimination, including mental health programmes as well as care for nutritional needs and palliative care. Various treaties also provide for an **adequate standard of living**, obliging care homes to provide residents with adequate food and housing and the continuous improvement of living conditions. Civil society organisations also advocate for the right to *tailored* care adapted to each individual's needs. Few treaties explicitly provide for **non-discrimination on the basis of age**, though UN treaty bodies have stated that discrimination on the basis of "other status" includes age-based discrimination.

Older persons whose rights have been breached also have the right to an effective remedy and care providers have a duty to provide residents with the right to an effective complaints procedure as well as support for making a complaint. The **right to an effective remedy** imposes positive obligations on duty-bearers to provide individuals whose rights have been breached with a remedy and reparation, as well as the provision of information in an accessible format to residents on their rights, and effective avenues for complaint that allow individuals to report breaches of their human rights or well-being without fear of reprisal. Care home residents also have the **right to adequate palliative and end-of-life care**, including respect for their wishes.

While residents do not have the right to a good relationship with care staff, it is important to highlight its crucial role in ensuring that all older persons enjoy their human rights while in care. Not only do staff have a duty to respect residents' right to life, safe and free from torture, they also effectively have a duty to make residents equal partners in decisions affecting their daily lives and care. Staff can only do this if there is good staff continuity and they have effective formal and informal communication channels with each resident and their families.

1. Introduction

This report is the first draft of a review and analysis of international human rights treaties relevant to the promotion of the human rights of older persons in receipt of, or with the potential to receive, long-term care in Europe. The report aims to provide a starting point for a shared vision for the provisions and principles that will guide the monitoring work to be carried out by the six representative countries on the human rights situation of older persons during the pilot phase of ENNHRI's *Human Rights of Older Persons and Long-term Care Project* (the Project). In this regard, it incorporates input from the Project's Advisory Group. It is anticipated that the report will eventually provide guidance to other NHRIs and civil society organisations seeking to carry out monitoring work in this area, once the monitoring work has been completed.

The report starts by describing the international human rights framework. It then distils all of the international standards to identify the key rights of older persons and long-term care. It shows where these standards can be found within the various international instruments (Annex 3), allowing each NHRI to determine how the rights apply within their own country. Relevant guidelines from civil society are also summarised.

2. International Human Rights Framework

Annex 1 provides a detailed overview of the international human rights framework relevant to the human rights of older persons in long-term care. It outlines the obligations on duty bearers to uphold the rights of older persons. Under the Paris Principles, the mandate of NHRIs includes:

- the promotion and protection of human rights.
- ensuring the harmonisation (and effective implementation) of national legislation, regulations and practices with the international human rights instruments to which the state is a party
- encouraging ratification of standards to which the state is not a party.

The European Convention on Human Rights (ECHR) is one of the most important international human rights treaties for the purposes of the Project, as it has been incorporated into the domestic legislation of all member states, which have undertaken to protect the rights defined in the Convention. Domestic courts therefore have to apply the Convention. Furthermore, any person who feels his or her rights have been violated under the Convention by a state party can take a case to the ECtHR (provided they have exhausted all remedies domestically first), whose decisions are binding. However, the ECHR focuses largely on civil and political rights, rather than economic, social and cultural rights, which are central to the day to day lives of older persons. Furthermore, under Article 14 of the ECHR, there is no free-

standing right to non-discrimination (except in relation to the rights set out in the Convention). As such, it is important to consider the standards set out in other treaties.

While not all European countries have ratified the seven binding UN conventions relevant to the Project (outlined in Annex 1), they set out the standards that the UN expects duty bearers to meet in protecting and promoting the human rights of all individuals. As the most recent UN convention, the CRPD is important for the purposes of the Project; ratified by 32 of 35 countries in wider Europe. About 60% of Europeans aged 75 years and over reported limitations in daily activities due to a health problem¹ and between 60-80% of older people living in residential care settings in Europe are thought to have some form of dementia (diagnosed or undiagnosed) while approximately 80% have a form of mild to severe disability. The circumstances of older people with disabilities are recognised explicitly in the text of the CRPD – in Article 25 on the right to health and in Article 28 on the right to an adequate standard of living. In addition, the European Union itself has become a party to the Convention, making it a high priority within the EU and its institutions.

The CoE's Revised European Social Charter (RESC) also contains rights specific to older persons and long-term care, as outlined in Annex 1. However, not all countries have ratified the RESC, and only twelve states that have ratified the RESC have bound themselves under Article 23.² As noted in Annex 1, the EU's Charter of Fundamental Rights (EUCFR) relates only to the institutions and bodies of the EU, and to the national authorities within the scope of EU law. As health, long-term care and most aspects of social policy are a member state rather than EU competence, the Charter has relatively limited relevance for the Project.

States parties (the duty-bearers) to the various binding UN and CoE conventions have an obligation to uphold the human rights of individuals in the jurisdiction. This includes any organisation who is contracted to carry out services on behalf of the State, and as such, includes private care homes with residents who are paid for by the State.

The UN, CoE and civil society organisations have also produced a number of important (non-binding) texts related to the human rights of older persons in care. Most importantly, the UN's *Principles for Older Persons* is a key text as it is the only UN source that expressly sets out the rights of older persons, and it was designed to influence the development of national policies so it serves as a benchmark against which these could be assessed. *The European Charter of the Rights and Responsibilities of Older People in Need of Long-term Care and Assistance*, developed by partnership framework EUSTACEA, is also an important document, as

¹ Lafortune G., and Balestat G et al., 2007, Trends in Severe Disability Among Elderly People: Assessing the Evidence in 12 OECD Countries and the Future Implications. OECD, Paris.

² <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=&DF=&CL=ENG&VL=1>

it gives guidance from advocates for older persons on how best to recognise and affirm the rights of the most vulnerable older people.

In summary, the report gives precedence to the ECHR (and its interpretation by the CoE and ECtHR) where possible, and augments this analysis with reference to the other key treaties. In addition, the report also seeks to highlight instances where there is a lack of clarity as to the rights of older persons in care.

3. Human Rights of Older Persons and Long-term Care

3.1 Introduction

This section sets out the rights relevant to older persons in care, documenting where possible how the various rights are described within the various treaties and their interpretation by the relevant treaty bodies and courts. The section should be read in conjunction with Annex 2, which is intended to help each NHRI to reference each specific right to the international treaties its country has ratified.

3.2 Entry into Long-Term Care: Access and Choice

International human rights standards do not explicitly provide older people with the right to long-term care. However, articles in various treaties do contain provisions on the right to equal access to healthcare services as well as assurance that they are affordable and on the right to a choice of long-term care setting, as outlined below.

3.2.1 Equal access to health services for all persons

In general, human rights instruments do not place a requirement for states to provide healthcare to all individuals who require it. Instead, they must make every possible effort, within available resources, to provide individuals with equal access to healthcare services (whereby no individual should have greater opportunity of access than any other). States parties to the International Convention on Economic, Social and Cultural Rights (ICESCR) have a duty to facilitate the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The obligation includes, *inter alia*, the adoption of legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties.³ States parties should also ensure that third parties do not limit access to health-related information and services and must recognise and provide for the specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases. As such, there is an obligation on states parties to provide adequate services for the specific needs of

³ CESRC, 2000, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Art. 12), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en

older persons, though long-term care is not specifically mentioned. States parties to the CRPD are obliged to provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons and also to provide persons with disabilities with access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

The ICESCR provides for the progressive realisation of economic, social and cultural and acknowledges the constraints due to the limits of available resources.⁴ This is an implicit recognition that States have resource constraints and that it necessarily takes time to implement the treaty provisions. While some states have claimed that resource constraints have prevented them from providing an adequate supply of healthcare services, the Committee on Economic, Social and Cultural Rights (CESCR) has argued that the progressive realisation principle should not be interpreted as depriving states parties' obligations of all meaningful content and that states parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realisation of Article 12.⁵ Instead, in order for a State party to be able to attribute its failure to meet its core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those core obligations.⁶ Thus, functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. Even in times of severe resource constraints, States parties must protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes.⁷

Furthermore, General Comment 14 suggests that there is a strong presumption that retrogressive measures taken 'are not permissible', with the burden of proof resting with the State to show such measures are warranted.⁸ Recent Concluding Observations in Ukraine,⁹ Slovenia¹⁰ Romania¹¹ all recommended increased spending on healthcare to fulfil states parties obligations to fulfil the right under Article 12.

Article 23 of the RESC requires CoE states parties to provide health care and services for older persons necessitated by their state. The European Committee of

⁴ Ibid.

⁵ Ibid.

⁶ CESCR, 2007, An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant, http://www2.ohchr.org/english/issues/escr/docs/e_c12_2007_1.pdf

⁷ CESCR, 2007, op cit.

⁸ CESCR, 2000, op cit.

⁹ CESCR, 2014, Concluding observations on the sixth periodic report of Ukraine, E/C.12/UKR/CO/6

¹⁰ CESCR, 2014, Concluding observations on the second periodic report of Slovenia, E/C.12/SVN/CO/2

¹¹ CESCR, 2014, Concluding observations on the combined third to fifth periodic reports of Romania, E/C.12/ROU/CO/3-5

Social Rights (ECSR), which monitors compliance with the obligations under the Revised Charter, has stated that the underlying objective of this provision is to “guarantee adequate health care and social services” to older persons, including an environment suited to their needs.¹² However, it is unclear whether this includes the obligation to provide institutional care as required.

Non-binding recommendations on the promotion of human rights of older persons from the Council of Europe (CoE) also emphasise the need for states to ensure that appropriate health care and long-term quality care is available and accessible.¹³ There are also a number of EU directives containing prohibitions of both direct and indirect discrimination on the grounds of sex,¹⁴ racial and ethnic origin,¹⁵ religion or belief, disability, age and sexual orientation,¹⁶ but the material scope of these directives varies and healthcare is not covered for all the protected grounds.

3.2.2 Affordability of healthcare services

Various provisions in international human rights law also seek to ensure that health services are affordable for all persons, including through the provision of social protection if necessary. Article 9 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security. Although it does not contain specific reference to the rights of older persons, the CESCR has specified that old age is covered by the right to social security.¹⁷ Thus, state benefits, including health benefits, should be adequate in both amount and duration and accessible to all without discrimination, though there is no guidance as to whether this includes long-term care. However, the Human Rights Committee (HRC) has made clear that discrimination is prohibited in relation to the right to social security where a State has adopted such legislation.¹⁸ Indeed, a failure to offer financial support to older persons to access healthcare can be seen as a form of multiple discrimination (on the grounds of age and socio-economic status).

Article 12 of the RESC relates to levels of social security, which states that “the existence of a carer's allowance for family members looking after an elderly relative” should be taken into account. Article 13 (the right to social and medical assistance) and Article 14 (the right to benefit from social welfare services), give further protection to those who may have a pension but are unable to cover the costs of

¹² European Committee of Social Rights, 1998, Conclusions XV-2 Volume 1 (Austria, Belgium, Denmark, Finland, France, Greece, Iceland, Italy),

https://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Year/XV2Vol1_en.pdf

¹³ Council of Europe, Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons, <https://wcd.coe.int/ViewDoc.jsp?id=2162283&>

¹⁴ Council Directive 2004/113/EC, OJ 2004 L 373/37 (Gender Equality Directive on Goods and Services) and 2006/54/EC, OJ 2006 L 204/23

¹⁵ Council Directive 2000/43/EC, OJ 2000 L 180/22 (Racial Equality Directive)

¹⁶ Council Directive 2000/78/EC, OJ 2000 L 303/16 (Employment Equality Directive)

¹⁷ CESCR, 2007, General Comment No. 19, The right to social security,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F19&Lang=en

¹⁸ 3 Human Rights Committee, communication No. 182/1984, FH Zwaan-de Vries v. The Netherlands, 9 April 1987, CCPR/C/29/D/182/1984

care. The (non-binding) Recommendation CM/Rec(2014)2 of the Committee of Ministers to Member States on the promotion of human rights to older persons indicates that care should be affordable for older persons and programmes should be in place to assist older persons, if necessary, with covering the costs.¹⁹ The issue of multiple discrimination is also important for older persons who seek access to care; for example, research by the European Union Agency for Fundamental Rights (FRA) shows that third-country nationals in need of long-term care may not be entitled to receive a pension or long-term care allowance.²⁰

3.2.3 Choice of long-term care service

As there is no explicit right to long-term care, there is no automatic right for older persons to choose a type of long-term care service. Indeed, in some cases, placement of older persons in institutional care against their will has not been interpreted as violating international human rights law.²¹ However, considerable debate remains and there is a growing movement to recognise that older people should have choice as to the type of care they should receive. This could also be seen in the context of the right to dignity, choice and autonomy and participation, as outlined below.

As outlined in greater detail below, all people are afforded protection from the deprivation of liberty by Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). In addition, Article 19 of the CRPD imposes a general obligation on states parties to enable persons with disabilities to live independently in the community, with the choice of where and with whom to live, and the support to allow them to do so. Furthermore, the Committee on the Rights of Persons with Disabilities (CRPD Committee) has interpreted article 14 of the CRPD (liberty and security) to mean that the involuntary detention of persons with disabilities is incompatible with the CRPD.²²

Civil society organisations throughout Europe have lobbied their governments to end the institutionalisation of people with disabilities and support independent living in the community. However, much of this work focuses on (younger) people with physical and/or intellectual disabilities, even though it is clear that many older people prefer to remain living in their own home rather than enter into residential care and many care settings display characteristics of institutions.

The RESC also explicitly recognises the right to adequate housing, including the provision of appropriate housing, including for older persons (Articles 15, 23), obliging

¹⁹ Council of Europe, Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons, op cit.

²⁰ European Union Agency for Fundamental Rights (FRA), 2013, Inequalities and multiple discrimination in access to and quality of healthcare, http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf.

²¹ See H.M. v. Switzerland (no. 39187/98), Watts v. the United Kingdom (no. 53586/09)

²² CRPD Committee, 2014, Statement on article 14 of the CRPD, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E>

states parties to adapt their housing to their needs or alternatively, to enable them to buy new housing which meets their needs. This indicates that there are obligations on states parties to the RESC to offer older people the opportunity to remain living in their own homes, without resorting to residential care. As such, it is important that this study explores the extent to which older persons have the choice of long-term care service that most suits their needs.

3.3 Rights in Care: Quality of Life and Quality Care Services

3.3.1 The right to life

The right to life imposes two types of obligation on the State, a negative duty not to take away anyone's life, a positive obligation to take reasonable steps to protect life, including in cases where the life of an individual is at risk from another person, where the authorities know or ought to know of this risk and a duty to carry out an independent investigation if a death occurs in which the state may be implicated.²³ The duty to protect life extends to residential care settings ensuring the safety of residents through its physical layout and security arrangements to prevent falls, and personal care should ensure safe handling of residents. The right to life is upheld in several international human rights treaties, most notably Article 1 of the UDHR and Article 2 of the ECHR, which places an obligation on the state and its public authorities "to take appropriate steps to safeguard the lives of those within its jurisdiction".²⁴

3.3.2 Prohibition of torture, degrading or inhuman treatment

The right to be free from torture and cruel and degrading treatment is upheld in many international human rights treaties, including the ICCPR (Articles 2,3 and 7), the Convention Against Torture (CAT; Article 2) and the ECHR (Articles 3 and 13). Furthermore, the broad definition of torture in the CAT means that any *intentional* act which causes pain or suffering to an older person living in a publicly-funded residential care setting falls under the remit of the convention. The HRC has highlighted the vulnerability of older persons in institutional and long-term care to inhuman or degrading treatment.²⁵

The issue of *unintentional/structural* abuse has also received attention in international human rights standards, both by the UN and the CoE. The CESCR has highlighted the need for states parties to ensure an adequate number of staff, training nursing care personnel according to the recently adopted standards of training and conduct more thorough inspections of care homes in order to improve the situation of older

²³ Age UK & British Institute of Human Rights, 2011, Older People and Human Rights, http://www.ageuk.org.uk/documents/en-gb/for-professionals/equality-and-human-rights/older_people_human_rights_expert_series_pro.pdf?dtrk=true, LCB v UK (14/1997/798/1001) para 36, Osman v UK (87/1997/871/1083), para 116.

²⁴ ECtHR Judgment: LCB v UK, 9 June 1998, 27 EHRR 212, para 36.

²⁵ Human Rights Committee, 2004, Concluding Observations, Germany, CCPR/CO/80/DEU, para 17.

persons in nursing homes and improve inhuman conditions.²⁶ Furthermore, as noted earlier, the Human Rights Committee (HRC) has made clear that states parties have obligations to use their available resources to provide for the right to the highest attainable standard of health.²⁷

Article 3 of the ECHR prohibits torture or inhuman or degrading treatment or punishment in absolute terms. The ECHR also imposes a positive obligation on states to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals.²⁸ As such, the prohibition of such treatment directly applies to carers providing services to older persons at home or in institutions.

Treatment is degrading if it: [...] is such as to arouse in the victims feelings of fear, anguish or inferiority capable of humiliating and debasing [an individual]. There is no requirement that humiliation or debasement is intended, thus neglect which results in humiliation can equally violate the right not to be subjected to degrading treatment.²⁹ However, neglect on its own does not amount to torture, which has been defined as the deliberate infliction “of inhuman treatment causing very serious and cruel suffering”.³⁰

Member States should implement sufficient measures aimed at raising awareness among medical staff, care workers, informal carers or other persons who provide services to older persons to detect violence or abuse in all settings, to advise them on which measures to take if they suspect that abuse has taken place and in particular to encourage them to report abuses to competent authorities. Member States should take measures to protect persons reporting abuses from any form of retaliation.

Case law arising from the ECHR illustrates the positive obligations on states and local authorities to protect older persons from abuse in families or institutional care. The case of *Heinisch v. Germany*³¹ centres around the right to freedom of expression following the dismissal of a whistle-blower in a care home for older persons, drawing attention to the importance of the dissemination of information on the quality of care to prevent abuse where the vulnerability of older persons may mean they are unable to draw attention to this themselves. In making its judgement, the ECtHR noted that

²⁶ Committee on Economic, Social and Cultural Rights, 2011, Concluding Observations, Germany, E/C.12/DEU/CO/5

²⁷ 3 Human Rights Committee, communication No. 182/1984, FH Zwaan-de Vries v. 1987, op cit.

²⁸ Explanatory Memorandum of Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons/

²⁹ Price v UK (no. 33394/96).

³⁰ Ireland v UK (no. 5310/71).

³¹ *Heinisch v Germany* (no. 28274/08), [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105777#{"itemid":\["001-105777"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105777#{)

older persons often are not in a position to draw attention to shortcomings concerning the provision of care on their own initiative.

Another ECtHR case highlights states parties' obligations to make regulations for appropriate protection measures and set up effective accountability mechanisms and independent judicial systems relating to the protection of older persons.³² Such measures are not explicit in the ECHR however, and have developed from evolving interpretation of standards by the ECtHR as a result of the serious concerns raised related to older persons. The ECSR has also recommended that all institutions should be licensed to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate.³³ The right to an effective remedy (redress) is also covered in Article 2 of the ICCPR, Articles 5 and 6 of the ECHR, Article 47 of the EUCFR.

The non-binding *European Charter on the rights and responsibilities of older people in need of long-term care and assistance* (ECROP),³⁴ also provides for the right to be free from abuse (Article 1) and the right to redress, including the right to be informed of the channels through which to report abuse and the right to report abuse or mistreatment without fear of any negative repercussions (Article 9).

3.3.3 *The right to liberty, freedom of movement and restraint*

Article 9 of the ICCPR outlines the right to liberty and security of person. The HRC's draft comment on this article states that "the right to liberty is not absolute" and allows for circumstances of detention in the field of mental health as long as it is "necessary and proportionate, for the purpose of protecting the person in question from harm or preventing injury to others".³⁵ Various articles of the ICCPR can be interpreted as prohibiting restraint, including Article 7 (prohibits torture or cruel, inhuman or degrading treatment or punishment), Article 10 (humanity and dignity for all individuals deprived of their liberty) and Article 12 (the right to liberty of movement).³⁶

Under the ICCPR, States parties must exercise caution when restricting an individual's liberty, both in terms of placing them in a residential care setting against

³² *Dodov v. Bulgaria* (no. 59548/00), Normative standards in international human rights law in relation to older persons: Analytical Outcome Paper, <http://social.un.org/ageing-working-group/documents/ohchr-outcome-paper-olderpersons12.pdf>

³³ Secretariat of the Council of Europe, Department of the European Social Charter, 2011, *The Rights of Elderly Persons under the European Social Charter*, cited in OHCHR, 2012, *ibid*.

³⁴ EUSTACEA, 2010, *European Charter of the rights and responsibilities of older people in need of long-term care and assistance*, http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf

³⁵ HRC, 2014, General comment No. 35, Article 9: Liberty and security of person, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx>

³⁶ Restraint can include: shadowing (when a staff member is constantly at the side of a patient and intervenes in his/her activities when necessary), manual control, mechanical restraints such as straps, straitjackets or enclosed beds, chemical restraint (medicating a patient against his/her will for the purpose of controlling behaviour) and seclusion (involuntary placement of a patient alone in a locked room); European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015, *CPT Standards*, <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

their will and restraining them while in care. It must be applied only as a measure of last resort, for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law. States parties should make adequate community-based or alternative social-care services available for persons with psychosocial disabilities, in order to provide less restrictive alternatives to confinement. The procedures should safeguard respect for the views of the individual and ensure that any representative genuinely represents and defends the wishes and interests of the individual. States parties must also ensure that an effective remedy is provided in cases in which an individual successfully claims to be deprived of his liberty in violation of the ICCPR.

The wording of Article 5 of the ECHR is similar to that of the ICCPR, though the circumstances under which detention is allowed are more explicitly listed, including the lawful detention of “persons of unsound mind”. In its Guide on Article 5,³⁷ the ECtHR states that the Convention allows these individuals to be deprived of their liberty both because they may be a danger to public safety and also because their own interests may necessitate their detention. The Guide notes that an individual cannot be deprived of their liberty as being of “unsound mind” unless the following three minimum conditions are satisfied:

- the individual must be reliably shown, by objective medical expertise, to be of unsound mind, unless emergency detention is required;
- the individual’s mental disorder must be of a kind to warrant compulsory confinement. The deprivation of liberty must be shown to have been necessary in the circumstances;
- the mental disorder, verified by objective medical evidence, must persist throughout the period of detention.³⁸

Any restriction must be both tailored to the individual’s circumstances and proportional to his or her needs. As such, the permissible grounds for deprivation of liberty is highly relevant for this Project, as older persons with a mental health problem or a form of dementia which poses a risk to themselves or others account for up to 80% of all older persons living in residential care settings.

The Council of Europe’s CPT also allows that “on occasion the use of physical force against a patient may be unavoidable in order to ensure the safety of staff and patients alike”, although it does also state that patients should be treated with respect and dignity, and in a safe, humane manner that respects their choices and self-determination, that the absence of violence and abuse, of patients by staff or

³⁷ European Court of Human Rights, 2014, *Guide on Article 5*, http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf

³⁸ *Winterwerp v the Netherlands* (no. 6301/73).

between patients, constitutes a minimum requirement; and that oral persuasion is preferred wherever possible as the least restrictive method.³⁹

Under Article 15 of the CRPD, practices involving restraints and seclusion may now be considered torture or another form of ill-treatment. The CRPD Committee has requested state parties to refrain from subjecting persons with disabilities to non-consensual treatment.⁴⁰ In light of this, the United Nations Special Rapporteur on Torture's 2013 report on abuses in health care settings states that any restraint on people with mental disabilities, including seclusion, even for a short period of time, may constitute torture or ill-treatment:

*The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.*⁴¹

There is evidence that the CRPD is having an impact on how the ECtHR interprets the right to liberty and freedom of movement. The case of *Herczegfalvy v. Austria* (1992) is much cited as an example of the Court's view on the permissibility of restraint. The Court held that continuously sedating and administering forcible feeding to a patient who was physically restrained by being tied to a bed for a period of two weeks was nonetheless consistent with article 3 of the ECHR because the treatment in question was medically necessary and in line with accepted psychiatric practice at that time. However, more recent cases indicate that the purpose, duration, frequency and practical effect of any verbal or indirect methods must always be borne in mind. In the 2001 case of *Price v UK*,⁴² involving the detention in custody of a woman with disabilities, Judge Greve considered that it was a violation of the applicant's right to physical integrity under Article 3 of the ECHR to prevent her from bringing with her the battery charger for her wheelchair.

3.3.4 The right to choice, autonomy, legal capacity and equality before the law

International human rights law in the area of choice and autonomy, including legal capacity and equality before the law is a complex and contentious issue. While neither the ICCPR nor the ICESCR explicitly provide for the right to choice or autonomy, human rights are often considered as the right to freedom and well-being; thus all human rights aim to ensure all individuals right to freedom and autonomy.

³⁹ <http://www.cpt.coe.int/en/documents/eng-standards.pdf>, 2015, p. 58

⁴⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of China, adopted by the Committee at its eighth session (17–28 September 2012), CRPD/C/CHN/CO/1.

⁴¹ HRC, 2013, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

⁴² *Price v UK*, op cit.

Article 17 of the ICCPR (the right to privacy) is often considered as providing for the right to autonomy, as it provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Similarly, the ECtHR has interpreted Article 8 (providing for the right to respect for one's private and family life, his home and his correspondence) of the ECHR widely, so that it implicitly provides for the right to personal autonomy and identity.

In the area of legal capacity, Article 16 of the ICCPR guarantees to all human beings the basic human right to be recognised as a person before the law; individuals are thus endowed with the 'capacity to be a person before the law', i.e. to be recognised as a potential bearer of legal rights and obligations. The ECHR does not contain a specific provision on recognition before the law, although Protocol 12 has regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law.

The CRPD is one of the only binding conventions that focuses explicitly on the right to choice and individual autonomy. The first principles on which the CRPD operates is "individual autonomy, including the freedom to make one's own choices". This includes the obligation on states parties to take appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice (Article 21). States parties to the CRPD also need to ensure that social care services for persons with disabilities should allow for equal choice and independence.⁴³ The Special Rapporteur on the right to the highest attainable standard of physical and mental health has noted that the persistent denial of the right to informed consent could constitute a form of physical and psychological abuse of older persons.⁴⁴

Article 12 of the CRPD reaffirms the right of persons with disabilities to be recognised as persons before the law. This provides that people with disabilities must be recognised as having equal legal capacity (the law's recognition of the decisions that a person takes)⁴⁵ in all aspects of life, must be provided with access to support that the individual may need in exercising her or his legal capacity and are assured of protection against any abuse of their right to have and exercise legal capacity. The CRPD Committee considers that perceived or actual deficits in mental capacity must

⁴³ OHCHR, 2009, Thematic Study on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf>
The Study indicates that states parties have an obligation to shift social service systems for persons with disabilities away from those focused on institutional care towards a system of community-based support services, including housing, an issue discussed in further detail below.

⁴⁴ HRC, 2011, Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37_en.pdf

⁴⁵ FRA, 2013, Legal capacity of persons with intellectual disabilities and persons with mental health problems, <http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>

not be used as justification for denying legal capacity under Article 12 of the Convention, affirming that all persons with disabilities have full legal capacity, thus recognising individuals as agents who can perform acts with legal effect - the key to accessing meaningful participation in society.⁴⁶ Article 12 of the CRPD thus requires that states parties recognise that persons with disabilities have legal capacity on an equal basis with others in all aspects of life, and that disability alone does not justify the deprivation of legal capacity. Thus, even when a person makes a decision that is considered to have negative consequences or their decision-making skills are considered to be deficient, their legal capacity must continue to be respected.

Article 12(4) of the CRPD remains the subject of intense debate and scrutiny over whether it ever permits substituted decision-making or requires the wholesale adoption of supported decision-making methods. In its Concluding Observations on Hungary and Spain as well as on Argentina, China, Peru and Tunisia, the CRPD Committee, however, recommended the “replacement”⁴⁷ of substituted decision-making with supported decision-making and the “immediate review of all current legislation that is based on a substitute decision-making model that deprives persons with disabilities of their legal capacity”.⁴⁸

The ECtHR has also produced an extensive body of case law addressing the legal capacity of persons with mental health problems and persons with intellectual disabilities. A number of judgments made specific reference to the CRPD, reflecting the ECtHR’s acknowledgment of “the growing importance which international instruments for the protection of people with mental disorders are now attaching to granting them as much legal autonomy as possible”. For example, in the case of *Stanev v. Bulgaria* ECtHR confirmed that long-term institutionalisation constituted a form of deprivation of liberty violating the right to liberty, and that that the applicant must be granted direct access to courts to have the measure of his legal incapacitation reviewed. The Court made specific reference to the CRPD in making its judgement, reflecting the ECtHR’s acknowledgment of “the growing importance which international instruments for the protection of people with mental disorders are now attaching to granting them as much legal autonomy as possible”.⁴⁹ This case also demonstrates how a denial of legal capacity to disabled people, through the imposition of an adult guardian, can lead to the violation of other fundamental rights – such as the right to a fair trial, the right to be informed of decisions made about the

⁴⁶ CRPD, General comment No. 1, Article 12: Equal recognition before the law. <http://daccess-ods.un.org/TMP/5023277.40192413.html>

⁴⁷ UN, CRPD Committee, 2012, Concluding Observations on Hungary, CRPD/C/HUN/CO/1; UN, CRPD Committee, 2011, Concluding Observations on Spain, CRPD/C/ESP/CO/1; UN, CRPD Committee (2012b), Concluding Observations on Argentina, CRPD/C/ARG/CO/1; UN, CRPD Committee (2012a), Concluding Observations on Peru, CRPD/C/PER/CO/1; UN, CRPD Committee (2011b), Concluding Observations on Tunisia, CRPD/C/TUN/CO/1.

⁴⁸ UN, CRPD Committee (2012d), Concluding Observations on China, CRPD/C/CHN/CO/1, CRPD/C/HUN/CO/1, UN, CRPD Committee, 2012, Concluding Observations on Hungary, *op. cit.*

⁴⁹ *Stanev v. Bulgaria*, (no. 36760/06), para 244.

person, the right to liberty and freedom of movement, and the right to freedom from inhuman and degrading treatment or punishment.

Other soft law has also begun to take account of the new direction that the CRPD has brought to this area. The CoE's Commissioner for Human Rights published an Issue Paper in 2012 in light of the CRPD's "paradigm shift in policies towards persons with disabilities (which) signals a deeper understanding of equality".⁵⁰ The Paper recommends CoE member states end 'voluntary' placements of persons in closed wards and social care homes against the person's will but with the consent of guardians or legal representative; develop supported decision-making alternatives for those who want assistance in making decisions or communicating them to others; and establish robust safeguards to ensure that any support provided respects the person receiving it and his or her preferences, is free of conflict of interests and is subject to regular judicial review. However, the CoE's 2014 recommendations on the promotion of the rights of older persons allow for "possible restrictions which may be required for protection purposes," suggesting that some discrepancy between the UN and CoE perspectives on choice and legal capacity remain.

Article 2 of the (non-binding) ECROP provides for the right to self-determination, including the right to make life choices. The Charter outlines individuals' right to support for decision-making, including leaving advance instructions on decisions relating to care, to be carried out by an appropriate third-party. Similarly, the Chicago Declaration on the Rights of Older Persons (CDHROP), a non-binding declaration drawn up by a group of legal scholars to support the work of the UN's Open-Ended Working Group on Ageing (OEWG) states that denial of legal capacity on the basis of old age is prohibited and that older persons have the right to assistance and support in the exercise of their legal capacity.

3.3.5 The right to dignity

The right to dignity is rarely protected in its own right in human rights treaties, apart from Article 1 of the EUCFR. In addition, Article 25 recognises "the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life." However, both the ICCPR and the ICESCR are based on the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family (Preamble). Article 10 of the ICCPR states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". In its monitoring work, the HRC has made reference to dignity outside of Article 10. It noted the vulnerable situation of older persons placed in long-term care homes, which in some instances had resulted in degrading treatment and

⁵⁰ Council of Europe Commissioner for Human Rights, 2012, Who Gets to Decide? Right to legal capacity for persons with intellectual and psychosocial disabilities, https://www.coe.int/t/commissioner/source/prems/IP_LegalCapacity_GBR.pdf

violated their right to human dignity (Article 7, freedom from torture or to cruel, inhuman or degrading treatment or punishment). The Committee was responding to inspection outcomes that had revealed various concerns in nursing homes, including insufficient documentation, disempowering care that was not co-ordinated with resources or residents' potential, a lack of care in relation to continence needs and a lack of knowledge about the provision of food and liquids.⁵¹ It also considered the use of cage beds in social care homes and psychiatric institutions a form of restraint and thus in violation of Article 10 (the right to liberty and dignity).⁵² Dignity is also a founding principle of other treaties, including the EHCR (and also underpins the right to private and family life under Art 8), the ICESCR and the CRPD.

A recent case⁵³ in the ECtHR concerning a 71-year-old lady with severely limited mobility who complained about a reduction by a local authority of the amount allocated for her weekly care addressed how a reduction in care provision can be interpreted as a violation of human rights if it results in a violation of dignity and the right to respect for private life. The reduction in the applicant's care allowance was based on the local authority's decision that her night-time toileting needs could be met by the provision of incontinence pads and absorbent sheets instead of a night-time carer to assist her in using a commode. The Court considered that the decision to reduce the amount allocated for the applicant's care had interfered with her right to respect for her family and private life, insofar as it required her to use incontinence pads when she was not actually incontinent. It held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention in respect of the period between 21 November 2008 and 4 November 2009 because the interference with the applicant's rights had not been in accordance with domestic law during this period. The Court further declared inadmissible (manifestly ill-founded) the applicant's complaint concerning the period after 4 November 2009 because the State had considerable discretion when it came to decisions concerning the allocation of scarce resources and, as such, the interference with the applicant's rights had been "necessary in a democratic society".

More attention is paid to dignity in non-binding and civil society guidance. Article 1 of the UNDHR declares that all human beings are born free and equal in dignity and rights and is one of the UN's Principles for Older Persons (UNPOP).⁵⁴ The Madrid International Plan of Action on Ageing (MIPAA),⁵⁵ the Economic Commission's for Europe's regional implementation plan (2002)⁵⁶ and the Ministerial Conference on

⁵¹ Cited in 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>

⁵² UN Human Rights Committee, 2003, Concluding Observations: Slovakia, 22 August 2003, CCPR/CO/78/SVK, para 13, cited in Northern Ireland Human Rights Commission (2012) op. cit.

⁵³ McDonald v. the United Kingdom (no. 4241/12)

⁵⁴ UN Principles for Older Persons, 1991, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

⁵⁵ Madrid International Plan of Action on Ageing, 2002, www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf

⁵⁶ Economic and Social Council, 2002, Regional Implementation Strategy for the Madrid International Plan of Action on Ageing, <http://undesadspd.org/LinkClick.aspx?fileticket=bRh2R09UA6g%3d&tabid=330>.

Ageing (2012)⁵⁷ all emphasised the importance of upholding dignity and individuality when institutionalisation is unavoidable. The right to dignity is outlined in the first article of the (non-binding) ECROP. This is broadly described as respect for and protection of each individual's physical, sexual, psychological, emotional, financial and material welfare and protection from neglect and abuse.

3.3.6 *The right to privacy and family life*

The right to respect for privacy and family life is enshrined in the UDHR (Article 12), the ICCPR (Article 17), the CRPD (Article 22), the ECHR (Article 8). Article 23 of the RESC provides for respect for residents' right to individual identity and private space, including modesty when dressing/bathing and privacy when one's personal circumstances are discussed by others. The right to privacy also addresses the infringement of the individual's moral and physical integrity;⁵⁸ the circumstances in which it is permissible to provide personal care or medical treatment without an individual's consent;⁵⁹ the power of an individual to make decisions as to personal risk⁶⁰ and protections to safeguard respect for aspects of an individual's personal identity, including matters such as personal choice as to one's mode of dress.⁶¹

The right to a private life also encompasses an individual's relationship with others, which is particularly important in the context of long-term care, as residents often rely on others to facilitate contact with family and friends. Care providers are required to take reasonable steps to help those in their care maintain contact with family members and accommodate spouses or same sex couples who wish to live together and continue their relationship in the home.⁶² The right to privacy is a qualified right, indicating that interference with these rights is allowed in special circumstances.

The right to privacy set out in Article 3 of the (non-binding) ECROP includes the provision of the right to the opportunity for time and space alone, if so wished by the individual, as well as respect for each individual's personal space and sense of modesty. The right to privacy of correspondence, data and discussions about care are also protected. Many voluntary charters also argue that older persons should have the right to have a say in how the residential care setting itself is run, given that it is their own home.⁶³ To a greater extent, this right is being realised in care homes through the provision of advocacy groups or residents' councils, which allow residents to collectively and formally make requests about specific aspects of home life.

⁵⁷ Economic and Social Council, 2012, Vienna Ministerial Declaration, http://www.unecce.org/fileadmin/DAM/pau/age/Ministerial_Conference_Vienna/Documents/ECE.AC.30-2012-3.E.pdf

⁵⁸ X and Y v Netherlands (no. 8978/80).

⁵⁹ Storck v Germany (no. 61603/00).

⁶⁰ X v Belgium (no. 7628/76).

⁶¹ McFeeley v UK (no. 8317/78).

⁶² See: McCotter v UK (no. 18632/91).

⁶³ c.f. http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/rights_of_older_person

3.3.7 *The right to participation and social inclusion*

Many of the provisions for participation and social inclusion in international human rights treaties refer to participation in wider society. Article 25 of the ICCPR provides for the right to take part in the conduct of public affairs and to vote. In order to achieve the goal of participation and inclusion it is necessary that education, employment, health care, social service systems, transportation, technology and society generally be adapted to ensure they are accessible and appropriate.⁶⁴ Participation in the community also refers to the community within the residential care setting, requiring homes to provide or facilitate access to recreational activities and events for older people.⁶⁵ Participation is both a right and an underlying principle of the CRPD, which recognises the obligation on states parties to take effective and appropriate measures to ensure all persons with disabilities enjoy their right to full inclusion and participation in the community. The CRPD Committee has indicated that states parties should not prevent persons with disabilities from voting and taking part in public affairs, including those placed under legal guardianship.⁶⁶ Strongly related to the right to choice and autonomy, the right to participation also covers involvement in decisions affecting life and healthcare. Article 4(3) of the CRPD calls for states parties to “closely consult with and actively involve persons with disabilities... through their representative organisations in the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities.”

Article 26 of the UDHR, Article 13 of the ICESCR and Article 24 of the CRPD also recognise the right of everyone to education. The CESCR has stated that older persons should have access to suitable education programmes and training throughout their lives. Article 2, Protocol 1 of the ECHR asserts that no person shall be denied the right to education and Article 15 of the RESC requires states parties to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private.

Non-binding treaties and texts pay particular attention to the right to participation and social inclusion. Participation is one of the UN Principles for Older Persons (UNPOP), whereby older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their wellbeing and share their knowledge and skills with younger generations. UNPOP also stipulates that older persons should have access to appropriate educational and training programmes and should be able to pursue opportunities for the full development of

⁶⁴ OHCHR, 2012, op cit.

⁶⁵ Cited in Northern Ireland Human Rights Commission, 2012, op. cit.

⁶⁶ CRPD Committee, 2014, *General Comment No.1*, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

their potential. As a result, care settings need to provide their residents with a range of educational programmes and to make sure that these meet the needs and requests of their residents. Article 6 of the ECROP also provides for the right to continued communication, participation in society and cultural activity. The CDHROP provides for the right to live independently and be included in the community and to participate in social, cultural and political life.

3.3.8 Freedom of expression, freedom of thought, conscience: beliefs, culture and religion

The (qualified) right to freedom of expression, freedom of thought and conscience, including the right to vote and take part in public affairs, is upheld in various international human rights treaties. The right to freedom of expression also includes the right to receive and impart information, and the CRPD further stipulates that this information should be available in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost (Article 21). The HRC has stated that policies or practices having the intention or effect of restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are inconsistent with the right to not to be subject to coercion which would impair freedom to have or to adopt a religion or belief of his choice (article 18.2). The same protection is enjoyed by holders of all beliefs of a non-religious nature. The HRC also urges states parties "to ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes [...]".⁶⁷

3.3.9 The right to highest attainable standard of physical and mental health

The international human rights framework contains a number of protections of the right to the highest attainable standard of physical and mental health requiring health facilities, goods and services to be made available, accessible, affordable, acceptable and be of good quality for older persons without discrimination. Article 12 of the ICESCR directs states parties to create conditions which would assure medical service and medical attention to all in the event of sickness. The CESCR highlights the importance of an integrated model of care, combining elements of preventative, curative and rehabilitative health treatment.⁶⁸ In its concluding observations, the CESCR has also drawn attention to the need for a national strategy on the health of older persons, and states parties' obligations to ensure older persons availability, accessibility, acceptability and quality of the health care.⁶⁹ The CESCR has also asserted that the right to health requires that medical treatment is "timely and

⁶⁷ Human Rights Council, 2007, *Resolution 6/37*, ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_37.pdf

⁶⁸ ESCR, *General Comment No. 14*, op cit.

⁶⁹ E/C.12/NDL/CO/4-5

appropriate”.⁷⁰ To ensure respect for residents’ right to health, regular review of medication is necessary, including a review of the appropriateness of continuing with dementia or anti-psychotic drugs. Moreover, for residents who have decision-making capacity, a process of review can ensure that they are aware of the risks and benefits of a particular medication, so that their consent to continue or refuse treatment is properly informed. Indeed, treatment in the absence of consent may amount to violation of a person’s physical and moral integrity and, therefore, their right to private life.⁷¹

Article 23 of the RESC requires the provision of programmes and services specifically aimed at older persons, in particular, nursing and health care in people’s own homes. It also requires mental health programmes for any psychological problems in respect of the older person, adequate palliative care services and measures designed to promote health, for instance, prevention and awareness-raising. The CoE’s Parliamentary Assembly (PACE) has drawn attention to the need to improve healthcare systems and make them accessible to all older persons, ensuring they receive appropriate medical care with specific attention to their nutritional needs.⁷² Human rights experts have argued that existing treaties do not set out binding standards and agreed norms with the degree of specificity that is required for the purposes of implementation for the full protection and realization of their rights.⁷³ The (non-binding) ECROP advocates for the right to high quality and *tailored* care, which is adapted to each person’s individual needs. This includes ensuring that aspects of each individual’s background and past lifestyle are taken into consideration (e.g. around mealtimes, sleeping arrangements, preferences), though this right is not provided for in binding human rights treaties.

3.3.10 The right to an adequate standard of living

Article 11 of the ICESCR and Article 28 of the CRPD recognise the right to an adequate standard of living includes adequate food and housing and the continuous improvement of living conditions. Therefore, government is likely to fall foul of its obligations under the ICESCR if older people in nursing homes are deprived of the basic essential levels of care, such as the provision of adequate food and water or medical assistance.⁷⁴ Furthermore, the state has a responsibility for progressive realisation and to ensure against retrogression (worsening) within the resources available. As noted earlier, the CESCR has highlighted the need for states parties to ensure an adequate number of staff, training nursing care personnel according to the recently adopted standards of training and conduct more thorough inspections of

⁷⁰ CESCR, 2000, General Comment No. 14, op cit.

⁷¹ See: MAK and RK v UK (nos. 45901/05 and 40146/06). See also: Glass v UK (61827/00) and X and Y v Netherlands (no. 8978/80).

⁷² Parliamentary Assembly of Europe, 2007, Recommendation 1796: The situation of elderly persons in Europe, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1796.htm>

⁷³ OHCHR, 2012, op. cit.

⁷⁴ Northern Ireland Human Rights Commission, 2012, op cit.

care homes in order to improve the situation of older persons in nursing homes and improve inhuman conditions.⁷⁵

3.3.11 Equality and non-discrimination

Neither the ICCPR nor the ICESCR explicitly mention discrimination on the basis of age. However, the HRC has stated that “a distinction related to age which is not based on reasonable and objective criteria may amount to discrimination on the ground of other status.” Similarly, the CESCR's General Comment No. 6,⁷⁶ provides guidance that discrimination on the basis of "other status" could be interpreted as applying to age. The ECHR also contains references to discrimination on the ground of “other status”. However, as noted earlier, under Article 14 of the ECHR, there is no free-standing right to non-discrimination. Article 19 of the Treaty of the European Union 2009 and the EUCFR, Article 21, both include non-discrimination clauses relating to age. The RESC provides an explicit basis for combating age-related discrimination.

Given the diversity amongst older persons in long-term care, it is important to note that anti-discrimination legislation also covers the grounds of race and ethnic origin, religion, disability, sexual orientation and gender. However, a review of existing UN treaties by FRA⁷⁷ indicates that a ‘single ground approach’, which descends from the conceptualisation of each ground of discrimination separately from all the others, informs UN law as well as EU law, and often characterises national law as well. 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.

The EU legal system 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.

⁷⁵ Committee on Economic, Social and Cultural Rights, 2011, Concluding Observations, Germany, E/C.12/DEU/CO/5

⁷⁶ CESCR, 1995, General Comment No. 6, The Economic, Social and Cultural Rights of Older Persons, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/482a0aced8049067c12563ed005acf9e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/482a0aced8049067c12563ed005acf9e?Opendocument)

⁷⁷ FRA, 2013, Inequalities and multiple discrimination in access to and quality of healthcare, http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf

The Horizontal Directive, tabled in 2008, proposes to equalise levels of protection across the grounds of religion or belief, disability, age and sexual orientation, preventing discrimination in both public and private sectors in respect of social protection, social advantage, education and access to goods and services. However, the proposed Directive remains blocked in the European Council.

3.3.12 Access to justice and the right to an effective remedy

The right to an effective remedy is upheld in Article 3 of the ICCPR, Article 13 of the ECHR (and Article 6 provides for the right to a fair trial) and Article 47 of the EUCFR. The right to access to justice is upheld in Article 13 of the CRPD. Although the concept of access to justice differs across conventions, it broadly refers to the right to be treated fairly according to the law and places an obligation on states to provide individuals whose rights have been breached with a remedy and reparation, as well as equal protection of the law. The latter typically refers to having a case heard expeditiously⁷⁸ in a court of law, and in practice largely refers to access to free legal aid and to a fair trial, but can also be achieved or supported more broadly through mechanisms such as National Human Rights Institutions, Equality Bodies and Ombudsman institutions, as well as the European Ombudsman at EU level. Access to justice in the form of a remedy and reparation is a process and should be transformative to address underlying inequalities which led to the violation in the first place. Furthermore, the protection of human rights requires the effective functioning of the justice system and timely remedies for violations. The ECtHR has held that the advanced age of a person may be a relevant factor in considering whether a case was dealt with “within a reasonable time” and thus may tighten the requirement for prompt trial under Article 6, paragraph 1 of the Convention.⁷⁹ Whichever means are used to provide redress, a remedy must be effective in practice as well as in theory and law.⁸⁰

Duty bearers, including care home owners and managers, also have positive obligations to promote and protect human rights under the ECHR. This includes:

- the provision of information in an accessible format to residents on their rights, as well as about their care, charges and services, facility rules and regulations, complaints procedures;
- deterring conduct that would infringe human rights;
- effective avenues for complaint that allow individuals to report breaches of their human rights or well-being without fear of reprisal; and
- Potentially providing residents with access to independent third party advocacy services.⁸¹

⁷⁸ HRC, 2007, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, <http://www.refworld.org/docid/478b2b2f2.html>

⁷⁹ Süssmann v. Germany (no. 20024/92), Jablonská v. Poland (no. 60225/00).

⁸⁰ Kudla v Poland (30210/96).

⁸¹ Equality and Human Rights Commission, 2011, Close to Home: An inquiry into older people and human rights in home care, http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Close%20to%20home.pdf

3.4 Palliative and end-of-life care

The principle of consent in the CRPD also refers to exit from care; the continued stay of individuals in long-term residential care should regularly ensure that they wish to remain there. There has been relatively limited exploration of end-of-life and palliative care issues by the human rights framework at either an international or regional level. The CESCR states that, with regard to the realization of the right to health of older persons, “attention and care for chronically and terminally ill persons [is important], sparing them avoidable pain and enabling them to die with dignity”⁸² and Article 23 of the RESC requires the provision of adequate palliative care services. Articles 2 and 8 of the ECHR also provide for the right to appropriate care arrangements to be in place upon discharge.⁸³

The most detailed standards on end of life issues can be found in a non-binding Recommendation of PACE to CoE Member States, encouraging states to recognise and protect a terminally ill or dying person’s right to comprehensive palliative care and their right to self-determination and by upholding the prohibition against intentionally taking the life of terminally ill or dying persons.⁸⁴ The (non-binding) ECROP suggests that older persons have the right to die with dignity, in circumstances that accord with the individual’s wishes and within the limits of the national legislation of your country of residence. It also provides for the right to compassionate help and palliative care at the end of life and the right to pain relief.

3.5 Staff Relations and Rights

The relationship that each resident has with the staff of their care home is not a human right in and of itself, but is highlighted here as it is central to the realisation of all of the human rights of older persons in long-term care. Not only do staff have a duty to respect their residents’ right to life, safe and free from torture, they also have a duty to make residents equal partners in decisions affecting their daily lives and care. Staff can only do this if there is good staff continuity and they have effective formal and informal communication channels with each resident and their families. They need to understand each resident’s individual needs and preferences and be adequately trained and qualified to respect their dignity and privacy, support residents’ in making decisions and provide them with information about the care setting and available care and treatment options in accessible formats if necessary. Staff members’ understanding of each resident’s choices and wishes is particularly important in facilitating their right to give or refuse consent, including understanding that lack of capacity to give informed consent on one occasion is not assumed to be

⁸² CESCR, 2000, General Comment No. 14, op cit.

⁸³ http://www.echr.coe.int/Documents/FS_Elderly_ENG.pdf

⁸⁴ Parliamentary Assembly of Europe, 2007, op. cit.

the case on another occasion and that residents' right to make decisions considered to have negative consequences are respected.

The rights of those employed in the long-term care sector themselves is also an important issue, both in its own right, and also because it impacts on their capacity to uphold the rights of those in their care.⁸⁵ While it is outside the scope of this paper to delineate all their rights, it is important that the main rights in relation to care workers' pay, working hours, rest periods and breaks, supervision, training and recruitment are respected. Workers' rights regarding privacy and dignity should also be upheld. Staffing calculations should take into account both residents' needs and the capacity of the staff to meet those needs.

4. Conclusion

All of the human rights enshrined in international human rights law apply to older persons in receipt of long-term care. However, there are some uncertainties as to how these rights apply in practice, including in particular in relation to the right to long-term care, the choice of home care instead of residential care, legal capacity and safety. There is also a lack of clarity around duty-bearers' responsibility to protect older residents' psychological well-being, through the provision of activities and social contact. Furthermore, a number of issues central to older persons' well-being while in care are not included in any binding treaties, including in relation to the contract between a resident and the care setting (particularly for those with limited capacity to understand their responsibilities), the inspection of care services and older persons' responsibilities while in care, including towards care staff.

The extent to which duty-bearers have a responsibility to make the care setting a true home, as opposed to simply housing a collection of older persons who need intensive long-term care is rarely discussed in human rights literature. Another issue which remains unclear is the extent to which private providers have a duty to uphold the human rights of their residents where they are not contracted to carry out the state's obligations. Exploring how these issues impact on the daily lives of older persons in care, and on the long-term care sector, can be explored in the course of the Project.

⁸⁵ The International Labour Organization (ILO) has developed a comprehensive system of international labour standards on work and social policy, backed by a supervisory system designed to address all sorts of problems in their application at the national level. This includes the ILO Declaration on Fundamental Principles and Rights at Work and the Occupational Health Services Convention. <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm> See also: <http://www.scie.org.uk/publications/guides/guide15/careworkers/>

Annex 1: International Human Rights Framework

Introduction

Human rights are the fundamental and irreducible rights of every individual, representing moral and ethical principles that are central to a democratic society. They are founded on a framework of fundamental values: dignity, autonomy, equality, fairness and respect.⁸⁶ Human rights are all inter-related, interdependent and indivisible. They are also universal, applying to all individuals irrespective of age, gender, citizenship, nationality, race, ethnicity, language, sexual orientation or ability. The human rights of individuals living in Europe are upheld through the body of international human rights law, a series of international (UN) and regional (CoE and EU) human rights treaties and other instruments adopted globally since 1945.

In recent years, there has been consideration as to how well the rights of older persons are protected. In contrast with other treaties such as on the rights of women, children, ethnic minorities and people with disabilities, there is no treaty expressly dedicated to protecting older persons' human rights. Many advocacy groups have argued that older people face particular challenges in having their rights upheld, particularly those in receipt of long-term care.⁸⁷ While the UN set up an Open-ended Working Group on Ageing (OEWG) for the purpose of strengthening the protection of the human rights of older persons in 2010, members are divided as to whether there is a need for a convention on the rights of older persons.

However, the lack of clarity as to the human rights of older persons can create some challenges in ensuring that their rights are upheld. For example, in previous monitoring work carried out by 10 ENNHRI members⁸⁸ on the human rights of older persons in long-term care, a total of 10 binding treaties and seven sets of recommendations drawn up by international human rights bodies were referenced. However, each report focuses on just 4-5 of these instruments, which potentially means that some key issues facing older persons may be overlooked.

⁸⁶ Equality and Human Rights Commission, 2011, op cit.

⁸⁷ Help Age International, 2010, Strengthening Older People's Rights: Towards a UN Convention,

[http://social.un.org/ageing-working-](http://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf)

[group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf](http://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf), The Global Alliance for the Rights of Older People, 2015, *In Our Own Words: What older people say about discrimination and human rights in older age: A consultation by the Global Alliance for the Rights of Older People*,

<http://www.rightsofolderpeople.org/new-garop-report-in-our-own-words/>

⁸⁸ Austria, Bosnia & Herzegovina, Germany, Great Britain, Hungary, Lithuania, Netherlands, Northern Ireland, Norway, Serbia.

UN Standards

There are seven core binding human rights treaties relevant to the human rights of older persons and long-term care that are monitored by the United Nations:

- The International Covenant on Civil and Political Rights (ICCPR)⁸⁹
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹⁰
- The Convention against Torture (CAT)⁹¹
- The Convention on the Elimination of all forms of Discrimination against Women (CEDAW)⁹²
- The International Convention on the Elimination of all forms of Racial Discrimination (CERD)⁹³
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW)⁹⁴
- Convention on the Rights of Persons with Disabilities (CRPD)⁹⁵

All of the conventions contain many similar provisions, including the right to life; to equality before the law (and thus the right to full legal capacity); dignity; equality; privacy; education; respect for home and family life; to own property; to an adequate standard of living; to the highest attainable standard of health; to be involved in decisions affecting their lives and care; to participate in the cultural life of the community; to social security and freedom - freedom of movement (and thus to be free from restraint), freedom from abuse and torture, and freedom to express their thoughts, beliefs (Article 19) and to practice religion.

The CRPD is arguably a key convention for the purposes of the Project. It is the most recent UN global convention, adopted by the UN General Assembly in 2006 and in force since 2008. It came about after a group of experts on disabilities argued in the 1980s for a new convention on the elimination of discrimination against people with disabilities, as existing human rights treaties were insufficient to this aim. In Europe, 80 million people have a disability, 15% of the total population. Of this total, 45.4% are aged 65 and over. Indeed, about 60% of Europeans aged 75 years and over reported that they had limitations in daily activities due to a health problem (Lafortune and Balestat, 2007; OECD, 2011a; Figure 1.3). Between 60-80% of older people living in residential care settings in Europe are thought to have some form of dementia (diagnosed or undiagnosed) while approximately 80% have a form of mild to severe disability. The circumstances of older people are recognised explicitly in the

⁸⁹ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁹⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

⁹¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁹² <http://www.un.org/womenwatch/daw/cedaw/>

⁹³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

⁹⁴ <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

⁹⁵ <http://www.un.org/disabilities/default.asp?id=150>

text of the CRPD – in Article 25 on the right to health and in Article 28 on the right to an adequate standard of living. In addition, the European Union itself has become a party to the Convention, making it a high priority within the EU and its institutions.

Although the CRPD does not explicitly define “long-term physical, mental, intellectual or sensory impairments”, existing standards establish that dementia is a form of mental disability within the meaning of human rights law. The CRPD is based upon a number of principles, set out in Article 3:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- g. Equality between men and women;
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

It seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity (Article 1) and respect for home and the family (Article 23). It also highlights states parties’ responsibility to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life (Article 26), which implies the availability of activities and social stimulation.

The CRPD provides a different perspective on a number of human rights issues than older treaties. For example, guidance on Article 14 issued by the CRPD Committee in 2014 firmly endorses the absolute prohibition of detention on the basis of disability. As such, it is contrary to Article 14 of the Convention for any state to force any individual to live in an institution against their will. As outlined in greater detail below, this stance is in contrast with other UN and CoE committees and courts, which have found that committing someone to institutional care against their will is permissible under certain circumstances. However, other UN and CoE treaty bodies and courts are taking account of the CRPD and there are signs that its “rights-based” philosophy⁹⁶ is influencing the interpretation of other conventions.⁹⁷

Each state party has to submit regular reports for each treaty it has ratified (usually every four to five years) which explain how it is implementing the rights in the treaty.⁹⁸ These reports are examined by a committee of experts, which publishes its concerns

⁹⁶ See for example www.cuts-international.org/CART/pdf/Dis-Ability_Junction_03-2011.pdf

⁹⁷ E.g. Council of Europe Commissioner for Human Rights, 2012, op. cit.

⁹⁸ Annex 1 provides a list of which countries have ratified each of these conventions.

and recommendations. NGOs can produce 'shadow reports', which the committee will consider alongside the states party's report. Some of the treaties have an optional mechanism that States can choose to sign up to, which means that individuals can make specific complaints that their rights have been violated to the relevant committee. Any individual who feels they have a complaint under these treaties can apply to the respective committee, but will need to take their complaint through the domestic courts system first.

The UN has also developed a body of 'soft' law guiding the treatment of older persons. While the various documents are not legally binding, they remain important for the Project both because they give guidance on how to implement the UN's binding conventions, and also because governments in Europe committed to their implementation.

The Vienna International Plan of Action on Ageing (1982)⁹⁹ was the first international agreement to guide policies and programs on ageing, eventually replaced by the MIPAA¹⁰⁰ replaced the Vienna Plan. The United Nations Principles for Older Persons were adopted by the UN General Assembly (Resolution 46/91) on 16 December 1991.¹⁰¹ Governments were encouraged to incorporate them into their national programmes. There are five principles: independence, participation, care, self-fulfilment and dignity. The Principles acknowledge the tremendous diversity in the situations of older persons, and that opportunities must be provided for older persons to participate in and contribute to the ongoing activities of society. Overall, the principles strongly complement the UN's core human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights, while emphasising the need to facilitate each individual's personal preferences and changing capacities.

The Madrid International Plan of Action on Ageing and the Political Declaration adopted at the Second World Assembly on Ageing¹⁰² in April 2002 remains the only international instrument devoted exclusively to older persons. It focuses on three priority areas: older persons and development; advancing health and well-being into old age; and ensuring enabling and supportive environments. Objectives on health and social care focused on the development of a continuum of health care to meet the needs of older persons, and on the participation of older people in the planning, implementation and evaluation of health and social care services and in decision-making related to their own care.¹⁰³

⁹⁹ www.un.org/es/globalissues/ageing/docs/vipaa.pdf

¹⁰⁰ www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf

¹⁰¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

¹⁰² <http://undesadspd.org/Ageing/Resources/MadridInternationalPlanofActiononAgeing.aspx>

¹⁰³ Para 74-77.

The Madrid Plan was complemented by a regional implementation strategy devised by the Economic Commission for Europe in 2002. This document was more specific on the rights of older Europeans in relation to their care, stating that:

Older persons should, where possible, have the right to choose between different options of long-term care. Whenever this is not possible their legal representative should give consent as to where they are cared for.¹⁰⁴ Geriatric and gerontological assessment is an effective instrument to determine whether institutionalisation is required. Where institutionalisation is unavoidable, it is imperative that the dignity and individuality of the older person be protected.

Nursing homes and geriatric centres should be developed to meet the specific needs of patients suffering from mental diseases. This includes multi-disciplinary geriatric and gerontological assessment (physical, psychological, social), counselling, care treatment and rehabilitation, accompanied by specific training schemes for care providers.¹⁰⁵

The regional strategy also suggested that residential accommodation may be an appropriate alternative to independent living where a high level of professional standards are offered and social exclusion is avoided.

Over the last five years, there has been more impetus amongst UN bodies to promote and protect the rights of older persons. In 2010, the General Assembly adopted a Resolution (65/182) to establish an open-ended working group (OEWG), open to all States Members of the United Nations, for the purpose of strengthening the protection of the human rights of older persons.¹⁰⁶ The OEWG was given a mandate to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.

The Group has reached broad agreement on the need to discuss the protection of human rights for this large and growing group and recognised that they have not been adequately addressed to date. However, while most Latin American and Caribbean delegates are in favour of a new instrument, delegates from European countries, Canada, the United States, and Australia argued that the rights of older people are provided for in existing conventions, and that more effective implementation would serve to protect their rights.

In 2012, representatives of the Member States of the United Nations Economic Commission for Europe (UNECE), gathered at the Ministerial Conference on Ageing from 19 to 20 September 2012 in Vienna, Austria, reaffirming their commitment to

¹⁰⁴ This issue of substitution of consent has since been revised within the terms of the CRPD.

¹⁰⁵ <http://undesadspd.org/LinkClick.aspx?fileticket=bRh2R09UA6g%3d&tabid=330>, para 59-60.

¹⁰⁶ <http://social.un.org/ageing-working-group/>

implement the Regional Implementation Strategy (RIS) of the Madrid International Plan of Action on Ageing (MIPAA).¹⁰⁷ Ministers and country delegations declared their determination to reach four priority policy goals by 2017, namely:

- encouraging longer working lives
- promoting participation, non-discrimination and social inclusion of older persons
- promoting and safeguarding dignity, health and independence in older age
- maintaining and enhancing intergenerational solidarity

They again emphasised the importance of respecting self-determination and dignity as core values through the end of life of an individual. This in particular should be the principal attitude in nursing and improve the situation of informal and formal carers, including migrant carers, through training and dignified working conditions including adequate remuneration.

Council of Europe Standards

The Council of Europe has three binding human rights instruments relevant to the human rights of older persons and long-term care:

- European Convention on Human Rights (ECHR)¹⁰⁸
- European Social Charter (ESC)¹⁰⁹ and Revised European Social Charter (RESC)¹¹⁰
- Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹¹¹

The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed CoE, the convention entered into force on 3 September 1953 and has been ratified by all 47 member states. The content of the ECHR broadly mirrors that of the UN's International Bill of Human Rights. The Convention established the ECtHR as its monitoring mechanism. Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Court's case law is related to individual cases, but it gives an indication of the interpretation of standards set by the Convention and the remedies needed to avoid future violations.

¹⁰⁷ United Nations Economic and Social Council, 2012, Economic Commission for Europe, Working Group on Ageing, 2012 Vienna Ministerial Declaration.

¹⁰⁸ <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

¹⁰⁹ <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/>

¹¹⁰ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=163>

¹¹¹ <http://www.cpt.coe.int/en/documents/ecpt.htm>

The RESC is the only legally binding human rights instrument that refers explicitly to the rights of older people in institutions within the main text of its articles. Article 23 relating to the right of “elderly persons to social protection” requires States to guarantee:

[...] elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

The ECSR is responsible for monitoring compliance with the Charter under two separate procedures: through reports drawn up by States parties and through collective complaints lodged by the social partners and other non-governmental organisations. However, only 14 member states have ratified the collective complaints mechanism.¹¹² The ECSR subsequently makes a decision as to whether or not the Charter has been violated, and transmits a report to the States party and the Council of Ministers. In the event of a violation of the Charter, the State is asked to notify the Committee of Ministers of the measures planned to bring it into conformity. The ECSR then determines whether the situation has been brought into compliance.

As well as eliminating discrimination on the basis of age, states parties to the revised Charter must adopt positive measures to ensure that elderly persons enjoy human rights as full members of society. In particular, states must provide adequate resources to enable them to live decent lives and play an active part in public, social, and cultural life. The Committee of Experts that monitors implementation has raised concerns which shape the scope of this obligation when assessing state reports. In general, the Committee addresses the "standard of living enabling the elderly to remain full members of society," by focusing on a country's financial resources, the cost of community care, and the availability of care.¹¹³ Under the case law of the Committee, states must provide social and medical assistance to those in need as a matter of right, or as stated by this body "as a subjective right, non-discretionary, sometimes subject to budget funds.

When older persons are unable to remain living in their own homes, Article 23 establishes that states must adopt measures to provide older persons with the services necessitated by their state of health. In this regard, the word "services" includes admission to specialised institutions for elderly persons when appropriate. The need to provide these services assumes the existence of an adequate number of institutions that the state can establish directly or, in cooperation with other relevant public or private organisations, protect the privacy of older persons living in institutions and guarantee their participation in decisions concerning living conditions

¹¹² Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia, Sweden.

¹¹³ Council of Europe, 1966, op cit.

in those institutions. The Explanatory Report states that the right to privacy in this context warrants special protection given the vulnerable situation of elderly persons living in institutions.¹¹⁴ In the European context, the right to privacy does not just refer to the right to live free of publicity, but also the right to establish and develop relationships with other human beings, for the development and fulfilment of one's own personality.

Not all countries have ratified the Revised Charter, and states parties are not required to accept all the obligations embodied upon ratification. In fact, Article A Part III of the Revised Charter states only that Contracting Parties should accept at least six out of a list of nine rights enumerated in Part II of that treaty, among which the right of the elderly to social protection is not included. In addition, Article A provides that in order for states to be bound, they must select other rights protected in Part II, up to a total of sixteen articles or sixty-three numbered paragraphs. In this regard, only twelve states that have ratified the Revised European Social Charter have bound themselves under Article 23.¹¹⁵

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted by the member states of the CoE in 1987. The convention is overseen by the Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT), which carries out a programme of visits to the Member States that have ratified the Convention to assess the treatment of people deprived of their liberty. The CPT has highlighted the delivery of inhuman and degrading treatment in the context of both involuntary placement in psychiatric establishments and residential care for older persons, through the provision of inadequate therapeutic activity, eating arrangements, staffing levels, training and the use of restraint.¹¹⁶

The CoE has also developed a number of non-binding recommendations, including in particular Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons. Most of the recommendations in the area of residential and institutional care reiterate stipulations already set out in the European Convention on Human Rights and the European Social Charter, and has also recommended that all institutions should be licensed to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate. Recommendations by the Committee of Ministers, although not legally binding, are instruments adopted by the governments of all 47 Council of Europe member States.

Recommendation CM/Rec(2009)6, on ageing and disability, emphasised the importance of autonomy and independence for ageing people with disabilities (individuals who have had a disability for most of their lives and are now growing

¹¹⁴ Council of Europe, 1966, op. cit.

¹¹⁵ <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=&DF=&CL=ENG&VL=1>

¹¹⁶ <http://www.cpt.coe.int/en/annual/rep-08.htm>, <http://www.cpt.coe.int/en/working-documents/cpt-2005-06-eng.pdf>

older) and older people with disabilities (those with a disability acquired in later life), and thus the need for carers to respect the rhythm of life of persons with whom they are working. It also emphasises the importance of enhancing the quality of services, both in terms of quality and quantity, placing particular importance on ensuring that the ratio of highly trained carers is high enough to offer a high standard of care. The Committee also recommended the availability of independent advisers to enable people to cope with the complexity of services and direct them to appropriate resources, both services and professionals, and also that the costs of care should be affordable to recipients.

European Union Standards

The Charter of Fundamental Rights of the European Union (EUCFR), which gained legal effect on 1 December 2009, recognises “the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life” (Article 25). The Charter is not intended to create new rights but rather to reaffirm and consolidate the human rights that are traditional to the domestic and international obligations of Member States, including those contained in the ECHR and the European Social Charter. However, the EUCFR relates only to the institutions and bodies of the EU, and to the national authorities only within the scope of EU law. As health, long-term care and most aspects of social policy are a member state rather than EU competence, the Charter has relatively limited relevance for the Project, apart from Article 38, promoting a high level of consumer protection and Article 21 (non-discrimination). Member States' governments are required under EU anti-discrimination law (Directive 2000/43/EC)⁴ to enact national legislation which prohibits discrimination on grounds of race or ethnic origin in the areas of employment, education, social protection as well as access to goods and services. The protection against discrimination in this area applies to everybody living in the EU, and not only to EU citizens.

The European Court of Justice was also established in 1952, as the original precursor to the European Union (the European Coal and Steel Community) was established. As the European Union has legislated in broad areas that affect individual rights, the European Court of Justice also hears cases related to violations of human rights, such as non-discrimination, freedom of religion, association, and expression.

Civil Society (Non-Binding) Standards

A number of guidelines and draft conventions have been drawn up by various civil society organisations. Most notably, the European Charter of the rights and responsibilities of older people in need of long-term care and assistance (ECROP,

2010)¹¹⁷ with its accompanying guide¹¹⁸ is an outcome of the EUSTACEA project (2008-2010) and has been translated into 9 languages. The charter consists of 9 rights, encompassing dignity, self-determination, privacy, high quality and tailored care, personalised information, communication and participation, freedom of expression and freedom of thought, palliative care and redress. The charter also outlines the responsibilities of older persons in care, namely, to respect the rights of others and to plan for the future.

The *Chicago Declaration on the Rights of Older Persons*¹¹⁹ (CDHROP) is a working product of scholars, advocates and policy makers from more than a dozen countries. It builds on the principles proclaimed in international human rights instruments and previous regional and international instruments promoting the rights of older persons. Elements of the CDHROP include the human rights and fundamental freedoms of older persons and proposed state obligations to ensure and promote those rights. The authors of the Declaration hope it will inform and contribute to the work of the Open-Ended Working Group on Ageing. The Declaration outlines the right to: equality; quality of life; liberty; equality before the law; health and long-term care; an adequate standard of living; housing; to live independently; education; to work; to own property; to be free from torture and exploitation and abuse; freedom of expression and access to information; freedom of association; respect for privacy; participation in social and cultural life; and assistance. The Declaration also delineates the obligations of States to ensure these rights are upheld.

Many national governments in Europe have developed declarations on the rights of older people to raise awareness of the expectations of service providers and to help older people themselves to understand their rights.¹²⁰ Several civil society organisations at national level have also developed country specific guidelines on the implementation of international human rights law, such as The Law Society of England and Wales' practical guide on identifying a deprivation of liberty.¹²¹ While the guide relates largely to domestic British law, it also makes reference to Article 5 of the ECHR, the right to liberty and security.

¹¹⁷ http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf

¹¹⁸ www.age-platform.eu/images/stories/22495_EN_06.pdf

¹¹⁹ www.jmls.edu/braun/pdf/chicago-declaration-v11.pdf

¹²⁰ German Federal Ministry of Family Affairs, Senior Citizens, Women, and Youth and the German Federal Ministry of Health, 2007, Charter of Rights for People in Need of Long Term Care and Assistance, http://www.dza.de/fileadmin/dza/pdf/Die_Charta_in_Englisch.pdf; Foundation of Gerontology and the Ministry of Employment and Solidarity (France), 2007, Charter of Dependent Older People, http://www.social-sante.gouv.fr/IMG/pdf/charte_2007_affiche-2.pdf; Welsh Government, 2014, Declaration of Rights for Older People in Wales, <http://gov.wales/docs/dhss/publications/140716olderen.pdf>

¹²¹ <http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>

Annex 2: Ratification of HR Treaties by ENNHRI Members

	ICESCR	ICCPR	CRPD	CEDAW	ICERD	ICMW	CAT	Op Cat	ECHR	ESC	RESC	ECPT	EUCFR
Albania	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	
Armenia	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	
Austria	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y
Azerbaijan	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	
Belgium	Y	Y	Y	Y	Y		Y		Y	Y	Y	Y	Y
Bosnia & Herzegovina	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	
Bulgaria	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	Y
Croatia	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Denmark	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Finland	Y	Y		Y	Y		Y	Y	Y	Y	Y	Y	Y
France	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y
Georgia	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	
Germany	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Great Britain	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Greece	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Hungary	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y
Ireland	Y	Y		Y	Y		Y		Y	Y	Y	Y	Y
Kosovo													
Latvia	Y	Y	Y	Y	Y		Y		Y	Y	Y	Y	Y
Lithuania	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	Y
Luxembourg	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Macedonia	Y	Y	Y	Y	Y		Y	Y		Y	Y	Y	

Netherlands	Y	Y		Y	Y		Y	Y	Y	Y	Y	Y	Y
Northern Ireland	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Norway	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	
Poland	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Portugal	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y
Romania	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	Y
Russia	Y	Y	Y	Y	Y		Y		Y		Y	Y	
Scotland	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Serbia	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	
Slovakia	Y	Y	Y	Y	Y		Y		Y	Y	Y	Y	Y
Slovenia	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	Y
Spain	Y	Y	Y	Y	Y		Y	Y	Y	Y		Y	Y
Sweden	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y
Turkey	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Ukraine	Y	Y	Y	Y	Y		Y	Y	Y		Y	Y	

Annex 3: Relevant Human Rights Standards

<i>Right</i>	<i>Provision</i>	<i>Guidance/Comments</i>
Accessing Long Term Care		
Equal access to health services for all persons	ICESCR (Article 12) CRPD (Article 25) ESC (Articles 11, 12, 13) RESC (Articles 11, 12, 13, 15, 23) EUCFR (Article 35)	<p>CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en</p> <p>Human Rights Council, A/HRC/18/37: http://www.un.org/Docs/journal/asp/ws.asp?m=a/hrc/18/37</p> <p>CoE Factsheet: http://www.coe.int/t/dghl/monitoring/socialcharter/Theme%20factsheets/FactsheetHealth_en.pdf</p> <p>Council of Europe, 1966, Explanatory Report to the Revised European Social Charter: http://conventions.coe.int/Treaty/EN/Reports/HTML/163.htm</p> <p>HRC, 2011, Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37_en.pdf</p>
Affordability of healthcare services	ICESCR (Article 9) CRPD (Article 25) ESC (Articles 11, 12, 13) RESC (Articles 11, 12, 13) EUCFR (Article 34)	<p>OHCHR, 2007, Factsheet 31, The Right to Health: http://www.ohchr.org/Documents/Publications/Factsheet31.pdf</p> <p>Council of Europe Committee of Ministers to Member States, 2014, Recommendation CM/Rec(2014)2: https://wcd.coe.int/ViewDoc.jsp?id=2162283&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383</p>

		European Union Agency for Fundamental Rights (FRA), 2013, Inequalities and multiple discrimination in access to and quality of healthcare: http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf
Choice of Long-Term Care Service (incorporates the right to adequate housing)	ICCPR (Article 9) CRPD (Articles 14, 19) ECHR (Article 2) RESC (Articles 15, 23)	CRPD Committee, 2014, Statement on Article 14: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E Human Rights Council, 2014, Thematic Study on the right of persons with disabilities to live independently and be included in the community: www.ohchr.org/EN/HRBodies/HRC/.../A_HRC_28_37_ENG.doc CESCR, 1991, General Comment No. 4, Right to Adequate Housing: http://www.escr-net.org/docs/i/425218
<i>Rights in Care</i>		
Right to Life	UDHR (Article 1) ICCPR (Article 6) ECHR (Article 2) EUCFR (Article 2.1)	CCPR, General Comment No. 14, Right to Life: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f4723&Lang=en
Freedom from Torture, violence and abuse (incorporates the right to an effective remedy)	UDHR (Article 5) CAT (Article 2) ICCPR (Articles 2, 3a, 7) ECHR (Articles 3, 13) EUCFR (Article 4)	HRC, 2004, General Comment No. 31, General Obligations on State Parties: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWog%2fhW%2fTpKi2tPhZsbEJw%2fGeZRASjdFuuJQRnbJEaUhby31WiQPI2mLFDe6ZSwMMvmQG VHA%3d%3d European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015, CPT Standards, http://www.cpt.coe.int/en/documents/eng-standards.pdf COE CDDH-AGE, 2012, Rights of the Elderly: http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/cddh-age/Document_CDDH_AGE/CDDH-AGE_2012_02_en.pdf

<p>Liberty, freedom of movement and restraint</p>	<p>ICCPR (Articles 7, 9, 10, 12) CRPD (Article 14, 15, 18) ECHR (Articles 3, 5) EUCFR (Article 6)</p>	<p>HRC, 2013, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf</p> <p>HRC, 2014, Draft general comment No. 35, Article 9: Liberty and security of person: http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx</p> <p>ECtHR, 2014, Guide on Article 5: http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf</p> <p>Council of Europe, Recommendation (2004)10, Art. 8: http://www.cpt.coe.int/en/documents/eng-standards.pdf</p>
<p>Choice, Autonomy, Legal Capacity and Equal Recognition before the Law</p>	<p>ICCPR (Articles 14, 16, 17, 18) CRPD (Article 12, 13, 17, 19) ECHR (Article 6, 8) RESC (Articles 15, 23) EUCFR (Articles 25, 26)</p>	<p>OHCHR, 2015, Thematic Study on the right of persons with disabilities to live independently and to be included in the community: http://www.ohchr.org/EN/Issues/Disability/Pages/LiveIndependently.aspx</p> <p>OHCHR, 2009, <i>Thematic Study on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities</i>, http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf</p> <p>CRPD, General comment No. 1, Article 12: Equal recognition before the law: http://daccess-ods.un.org/TMP/5023277.40192413.html</p> <p>Council of Europe Commissioner for Human Rights, 2012, Issue Paper: Who Gets to Decide? Right to legal capacity for persons with intellectual and psychosocial disabilities: https://www.coe.int/t/commissioner/source/prems/IP_LegalCapacity_GBR.pdf</p> <p>Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c649f</p>

		<p>ECtHR, 2014, Factsheet on the Elderly: http://www.echr.coe.int/Documents/FS_Elderly_ENG.pdf</p> <p>FRA, 2013, Legal Capacity of persons with intellectual disabilities and persons with mental health problems: http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf</p> <p>European Charter of the rights and responsibilities of older people in need of long-term care and assistance, 2010: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf</p>
Dignity	<p>UDHR (Article 1) ICCPR (Articles 7, 10) ICESCR (Principles) CRPD (Article 3) ECHR (Article 8) EUCFR (Article 1, 25)</p>	<p>UN Principles for Older Persons, 1991: http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx</p> <p>Madrid International Plan of Action on Ageing, 2002: http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf</p> <p>Economic and Social Council, 2012, Vienna Ministerial Declaration: http://www.unece.org/fileadmin/DAM/pau/age/Ministerial_Conference_Vienna/Documents/ECE.AC.30-2012-3.E.pdf</p> <p>European Charter of the rights and responsibilities of older people in need of long-term care and assistance, 2010: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf</p>
Privacy and family life	<p>UDHR (Article 12) ICCPR (Articles 17, 23) CRPD (Article 22, 23) ECHR (Article 8) ESC, Article 16 RESC (Articles 16, 23) EUCFR (Article 7)</p>	<p>Council of Europe Committee of Ministers to Member States, 2014, Guiding Principles of the Recommendation CM/Rec(2014)2: https://wcd.coe.int/ViewDoc.jsp?id=2162283&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383</p> <p>Secretariat of the Council of Europe, Department of the European Social Charter, 2011, <i>The Rights of Elderly Persons under the European Social Charter</i>,</p>

		<p>European Charter of the rights and responsibilities of older people in need of long-term care and assistance, 2010: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf</p>
Participation and social inclusion	<p>ICCPR (Article 25, 26) ICESCR (Article 15) CRPD (Articles 3, 19, 26, 29) RESC (Articles 15, 30) EUCFR (Article 25)</p>	<p>CESCR, 2009, General Comment No. 21, Right of everyone to take part in cultural life: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQc5ReG9hKvddWC2ML5U76E63nT%2beY%2btmSVIRS0ynN0q4EDmpjJye7rC1DxEtC%2fGxx7WLBcmnxGwpWSXy0fmnHDS</p> <p>http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement</p> <p>FRA, 2014, Political Participation of People with Disabilities: http://fra.europa.eu/sites/default/files/fra_uploads/1216-Report-vote-disability_EN.pdf</p> <p>European Charter of the rights and responsibilities of older people in need of long-term care and assistance, 2010: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf</p>
Freedom of expression, freedom of thought, conscience: beliefs, culture and religion	<p>UDHR (Articles 18, 19) ICCPR (Articles 18, 19) ICESCR (Articles 6, 7, 13) ECHR (Articles 2, 9,10) CRPD (Articles 21, 29) EUCFR (Articles 10, 11)</p>	<p>HRC, 1993, General Comment No. 22, Right to freedom of thought, conscience and religion: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=e</p> <p>HRC, 2011, General Comment No. 34, Article 19: Freedoms of opinion and expression: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H1I5979OVGGB%2bWPAXiks7ivEzdmLQdosDnCG8FaJ7cphH%2fR9YlpwV%2bAPs%2bmcJcH5I4VEHaUJAAZCeS1gKdFOTIUSHQDT3EiNHS2mKIF</p>
Right to highest attainable standard of physical and mental health	<p>ICESCR (Article 12) CRDP (Article 25) ESC (Article 11) RESC (Article 11, 23) EUCFR (Article 35)</p>	<p>CESCR, 2000, General Comment No. 14: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en</p>

		<p>Human Rights Council, 2011, A/HRC/18/37: http://www.un.org/Docs/journal/asp/ws.asp?m=a/hrc/18/37</p> <p>HRC, 2011, Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37_en.pdf</p>
An adequate standard of living	ICESCR (Article 11) CRPD (Article 28)	<p>CESCR, 1991, General Comment No. 4, The right to adequate housing: https://www1.umn.edu/humanrts/gencomm/epcomm4.htm</p>
Equality and non-discrimination	ICCPR (Article 4) ICESCR (Article 2) CRPD (Article 3) ECHR (Article 14) RESC (Part 5, Article E) EUCFR (Article 21)	<p>CESCR, 1995, General Comment No. 6, The economic, social and cultural rights of older persons: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/482a0aced8049067c12563ed005acf9e?OpenDocument</p> <p>Human Rights Council, 2011, A/HRC/18/37: http://www.un.org/Docs/journal/asp/ws.asp?m=a/hrc/18/37</p>
Access to Justice, effective remedy, redress	ICCPR (Article 3) CRPD (Article 13) ECHR (Articles 6, 13) EUCFR (Article 47)	<p>HRC, 2007, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, http://www.refworld.org/docid/478b2b2f2.html</p>
Palliative and end-of-life care	RESC (Article 23)	<p>Parliamentary Assembly of Europe (2007) Recommendation 1796: The situation of elderly persons in Europe: http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1796.htm</p> <p>European Charter of the rights and responsibilities of older people in need of long-term care and assistance, 2010: http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf</p>