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Title	Protecting the rights of older persons in situations of risk and humanitarian emergencies through the proposed UN Convention on the Rights of Older Persons
Authors	Cubie, Dug;Baird, Natalie
Publication date	2026-03-16
Original Citation	Cubie, D & Baird, N 2026, 'Protecting the rights of older persons in situations of risk and humanitarian emergencies through the proposed UN Convention on the Rights of Older Persons', Human Rights Law Review, vol. 26, no. 2, ngag002. https://doi.org/10.1093/hrlr/ngag002
Type of publication	Article (peer-reviewed)
Link to publisher's version	https://www.scopus.com/pages/publications/105033140462 - 10.1093/hrlr/ngag002
Rights	Publisher Copyright: © 2026 The Author(s). Published by Oxford University Press. - https://creativecommons.org/licenses/by-nc-nd/4.0/
Download date	2026-11-06 19:08:16
Item downloaded from	https://hdl.handle.net/10468/18653



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Human Rights Law Review, 2026, **26**, ngag002
https://doi.org/10.1093/hrlr/ngag002
Article

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Protecting the rights of older persons in situations of risk and humanitarian emergencies through the proposed UN Convention on the Rights of Older Persons

Dug Cubie[1,*,†] and Natalie Baird[2,†]

[1]Senior Lecturer, School of Law, University College Cork, Gaol Walk, Cork, T12 T656, Ireland

[2]Professor, Faculty of Law | Te Kaupeka Ture, University of Canterbury | Te Whare Wānanga o Waitaha, Christchurch 8140, New Zealand

*Corresponding author. School of Law, University College Cork, Gaol Walk, Cork, T12 T656, Ireland. Email: d.cubie@ucc.ie

Abstract

It goes without saying that in times of risk and humanitarian emergency, such as armed conflict, forced displacement, and disasters, older persons may be in a particularly precarious situation. In April 2025, the UN Human Rights Council unanimously adopted Resolution 58/13 to commence a process for the elaboration of a legally binding international instrument on the rights of older persons. This is an important milestone since older persons face 'relative invisibility' in both international human rights law and during humanitarian crises. This article critically analyses the existing provisions in regional and international human rights law on the rights of older persons, and in particular on the rights of older persons in situations of risk and humanitarian emergencies. To promote debate and critique, the article sets out proposed wording for a dedicated article on situations of risk in the proposed UN Convention on the Rights of Older Persons.

† The authors would like to thank participants at the conference 'Older Persons and Crises: Rights and Challenges' organized by the Erik Castrén Institute, University of Helsinki in March 2025 for their insightful comments on an early draft of our proposed article for the CROP. We would also like to acknowledge the insights and engagement with our arguments from the two peer reviewers. Any errors remain our own.

Received: 27 August 2026. **Revised:** 4 January 2026. **Accepted:** 3 February 2026
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Keywords: older persons, Convention on the Rights of Older Persons, humanitarian emergencies, disasters, armed conflict, forced displacement

1 Introduction

It goes without saying that in times of risk and humanitarian emergency, older persons may be in a particularly precarious situation. For example, in November 2024, unprecedented flooding occurred in the Valencia region of Spain, devastating properties and leading to the deaths of 223 people. Shockingly, most of those killed were over the age of 70.[1] Less than 2 months later, the massive Los Angeles wildfires of January 2025 similarly highlighted the overwhelming impact that disasters can have on older persons. Direct Relief, a humanitarian non-governmental organisation working during the emergency phase of the wildfires, provided support to older residents who were evacuated from nursing facilities. Some were patients in hospice and end-of-life care settings in need of oxygen and priority medical care, while others arrived at evacuation centres in hospital gowns covered in ash.[2] Serious risks for older persons likewise arise during armed conflicts. The UN Human Rights Monitoring Mission in Ukraine has reported that older people across the frontline have been hit 'exceptionally hard by power outages, water cuts as well as a lack of access to health services, medication and pensions';[3] and HelpAge International has highlighted that 'Older persons in Gaza are often forgotten or overlooked.'[4]

Yet older persons are not simply a 'vulnerable' group in need of care. Indeed, 'old age' itself should be understood as a social construct, rather than a specific age or number.[5] For instance, the 2010–11 Canterbury Earthquake Sequence in New Zealand highlighted the extensive skills and expertise that older persons can bring to response and recovery activities when they are pro-actively included in emergency planning and preparation.[6] In a similar

[1] Martin-Moreno et al., 'Devastating "DANA" Floods in Valencia: Insights on Resilience, Challenges, and Strategies Addressing Future Disasters' (2025) 46 *Public Health Review* 1,608,297 at 2. See also: Jones, 'Almost half of Valencia's flood victims were aged over 70, figures show', *Guardian*, 14 November 2024, available at: www.theguardian.com/world/2024/nov/14/almost-half-of-spains-flood-victims-were-over-70-figures-show [last accessed 4 January 2026].

[2] Meyers, 'Los Angeles Wildfires Leave Older Patients Vulnerable' (22 January 2025), *Direct Relief*, available at: www.directrelief.org/2025/01/los-angeles-wildfires-leave-older-patients-vulnerable/ [last accessed 4 January 2026].

[3] UN Office of the High Commissioner for Human Rights (OHCHR), 'The UN Says Russia's Armed Attack on Ukraine Has Had a Devastating Impact on Older People, Demands Access | UN Human Rights Monitoring Mission in Ukraine' (24 May 2023), available at: https://ukraine.ohchr.org/en/The-UN-Says-Russia%E2%80%99s-Armed-Attack-on-Ukraine-Has-Had-a-Devastating-Impact-on-Older-People-Demands-Access [last accessed 4 January 2026].

[4] HelpAge International, 'A year of unimaginable hardship for Gaza's older people: A reflection by Dr. Umaiyeh' (14 October 2024), available at: www.helpage.org/news/gaza-one-year-on/ [last accessed 4 January 2026].

[5] See, for example: UN High Commissioner for Refugees (UNHCR), *Emergency Handbook*, 'Older Persons' (last updated 13 June 2024), available at: https://emergency.unhcr.org/protection/persons-risk/older-persons [last accessed 4 January 2026].

[6] See: Baird, 'Disasters, Human Rights and Vulnerability: Reflections from the Experiences of Older Persons in Post-Quake Canterbury' (2021) 2 *Yearbook of International Disaster Law* 314; UN General Assembly, Human Rights Council, Visit to New Zealand—Report of the Independent Expert on the enjoyment of all human rights by older persons, 13 July 2020, A/HRC/45/14/Add.2.

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manner, the unique wisdom and insights of Indigenous Elders and Knowledge-keepers can play a central role in addressing environmental and climate risks within their communities.[7]

Against a backdrop of global political instability, protracted armed conflicts and the disastrous impacts of climate change, there is an urgent need to provide protection and security for older persons in situations of risk. Indeed, the examples above highlight the 'relative invisibility'[8] of older persons in both international human rights law and humanitarian crises. Such invisibility is especially concerning due to the intersecting vulnerabilities and risks that many older persons face, and the concomitant need for coherence between different legal and policy frameworks. Despite the generally pessimistic global outlook for human rights protections at present, now is a precipitous time to address these issues. On 3 April 2025, the UN Human Rights Council unanimously adopted Resolution 58/13 which calls on states to establish a working group to draft an international legally binding instrument on the human rights of older persons.[9] This move was welcomed by Ilze Brands Kehris, UN Assistant Secretary-General for Human Rights, who called it a 'bold, concrete step' and argued that 'now is the time to turn our commitments into action.'[10]

Extensive work has been undertaken over the past 15 years to get to this point, including detailed inputs from civil society groups advocating for older persons.[11] In particular, the UN General Assembly (UNGA) established an Open-ended Working Group on Ageing (OEWG) in 2010,[12] which was followed in October 2013 with the appointment of an Independent Expert on the enjoyment of all human rights by older persons.[13] Notably, in 2021, the UN Office of the High Commissioner for Human Rights (OHCHR) argued that the existing human rights treaties do not provide a 'coherent conceptual framework' for protecting the rights of older persons, and that it was 'unrealistic and impractical' to consider that existing human rights bodies could give significant time and attention to the human rights of older persons.[14]

[7] See, for example: Datta, Starlight (Tsuut'ina First Nation) and Mistaken (Kainai First Nation), 'Indigenous Elder Perspectives on Climate Change Challenges and Solutions: Learning Reflection from Blackfoot First Nation Perspectives, Canada' (September 2024) 20(3) *AlterNative: An International Journal of Indigenous Peoples* 549; UN Office for Disaster Risk Reduction (UNDRR), *Using Traditional and Indigenous Knowledges for Disaster Risk Reduction: Words into Action Guidelines* (2022); Aronsson-Storrier, 'Environmental Destruction and the Root Causes of Disaster Risk: The Need for New Imaginaries in International Law' in Cubie (ed.), *A Research Agenda for Disaster Law* (2025) at 143.

[8] Herro and Byrnes, 'Transcending the Framing Contests over the Human Rights of Older Persons' (2020) 38 *Australian Yearbook of International Law* 253.

[9] UN General Assembly, Human Rights Council, Res 58/13, Open-ended intergovernmental working group for the elaboration of a legally binding instrument on the promotion and protection of the human rights of older persons, 4 April 2025, A/HRC/RES/58/13, para 1. See also: Brocca, 'The Rights of Older Persons: A Historic Step Forward' (30 April 2025) *EJIL:Talk!*

[10] UN Office of the High Commissioner for Human Rights (OHCHR), 'ASG Brands Kehris calls for international legally binding instrument on the human rights of older persons', Statement (8 May 2025), available at: www.ohchr.org/en/statements-and-speeches/2025/05/asg-brands-kehris-calls-international-legally-binding-instrument [last accessed 4 January 2026].

[11] See, in particular, the work of the Global Alliance for the Rights of Older Persons, a global network of more than 400 civil society organisations, which has campaigned since 2011 to strengthen the rights and voice of older people across the world. More information is available at: https://rightsofolderpeople.org/intergovernmental-working-group-igwg/) [last accessed 4 January 2026].

[12] UN General Assembly, Res 65/182, Follow-up to the Second World Assembly on Ageing, 4 February 2011, A/RES/65/182.

[13] Human Rights Council, Res 24/20, The human rights of older persons, 8 October 2013, A/HRC/RES/24/20.

[14] UN Office of the High Commissioner for Human Rights (OHCHR), *Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons*, Working Paper (March 2021), 'Summary of Conclusions at 4-5. For analysis of the early stages of this process, see: Sciubba, 'Explaining Campaign Timing and Support for a UN Convention on the Rights of Older People' (2014) 18(4–5) *The International Journal of Human Rights* 462.

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The Open-Ended Working Group on Ageing submitted its final report in May 2024, recommending that Member States should consider a suite of options to address protection gaps for older persons, including the adoption of an 'international legally binding instrument to promote, protect and ensure the recognition and the realization … of all human rights of older persons.'[15] This was followed by a call from the UNGA for Member States to consider the OEWG recommendations, and a request to the UNGA President to convene a high-level meeting to exchange views, share experiences and 'to define next steps on the challenges and opportunities regarding the rights and well-being of older persons.'[16] The outcome of this multi-year process was Resolution 58/13 in April 2025, presented by a core group of states comprising Argentina, Brazil, the Gambia, the Philippines, and Slovenia.[17] The resolution was supported by 81 states and records states' commitment to elaborate a legally binding instrument on the rights of older persons.[18] The first meeting of the new Intergovernmental Working Group on Ageing took place at the Human Rights Council in February 2026. Already, the 25 states who are members of the Group of Friends of Older Persons have pledged to support efforts to develop a legally binding instrument.[19]

There are strong arguments in favour of a new international human rights treaty specifically focused on older persons[20]—not least the tragic and disproportionate impacts of the COVID-19 pandemic on older persons, which starkly highlighted the invisibility and lack of consideration given to older persons by many states in their risk planning and emergency responses.[21] While there are no guarantees regarding the final format and content of the proposed UN Convention on the Rights of Older Persons (CROP), this article supports the adoption of such a treaty and takes inspiration from the call made by the UNGA to Member States to propose 'possible content for a multilateral legal instrument' to enhance the promotion and protection of the human rights and dignity of older persons.[22]

[15] UN General Assembly, Report of the Open-ended Working Group on Ageing on its fourteenth session, 31 May 2024, A/AC.278/2024/2 at para 25.

[16] UN General Assembly, Res 78/324, Consideration of decision 14/1 of the Open-ended Working Group on Ageing, entitled 'Recommendations regarding the identification of possible gaps in the protection of the human rights of older persons and how best to address them', 14 August 2024, A/RES/78/324. See also: Cubie, 'Disasters, International Law, and the Rights of Older Persons: New Developments' (16 October 2024) 28(8) *ASIL Insights*, available at: www.asil.org/insights/volume/28/issue/8 [last accessed 4 January 2026].

[17] Brocca, supra n 9.

[18] See, '2025 Theme: Older Persons Driving Local and Global Action: Our Aspirations, Our Well-Being and Our Rights' *UN Observances,* available at: www.un.org/en/observances/older-persons-day [last accessed 4 January 2026].

[19] These 25 states are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Indonesia, Kenya, Malaysia, Mexico, Panama, Paraguay, Peru, Philippines, Qatar, Slovenia, South Africa, Trinidad and Tobago and Uruguay. See: 'Rights of Older Persons' *The NGO Committee on Ageing,* available at: www.ngocoa-ny.org/rights-of-older-persons.html [last accessed 4 January 2026].

[20] See, for example: Mégret, 'The Human Rights of Older Persons: A Growing Challenge' (2011) 11(1) *Human Rights Law Review* 37; Poffé, 'Towards a New United Nations Human Rights Convention for Older Persons?' (2015) 15 *Human Rights Law Review* 591; HelpAge International, *A New Convention on the Rights of Older People: A Concrete Proposal* (March 2015); Tang and Lee, 'Global Social Justice for Older People: The Case for an International Convention on the Rights of Older People' (2006) 36 *British Journal of Social Work* 1135.

[21] For detailed discussion of the numbers of deaths in care homes in many Western countries, see: Breau, 'Lessons from COVID-19 with Respect to the Positive Obligations of States to Protect Older Persons in the Event of Disasters' (2022) 5 *Yearbook of International Disaster Law* 32; Breau, 'All Necessary Measures? The Obligation to Protect Disabled Persons in Disasters' in Aronsson-Storrier and Breau (eds.), *Research Handbook on Disasters and International Law*, 2nd edn (2024).

[22] UN General Assembly, Res 70/164, Measures to enhance the promotion and protection of the human rights and dignity of older persons, 22 February 2016, A/RES/70/164 at para 11.

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Therefore, drawing on insights from existing international legal texts, this article argues for the inclusion of a dedicated article on situations of risk and humanitarian emergencies in the proposed Convention on the Rights of Older Persons. Section 2 commences by discussing the concepts of 'older persons' and 'situations of risk' as well as identifying some of the key impacts of such risks on older persons. Section 3 then examines the protections (or lack thereof) for older persons in international human rights law via an analysis of comments made by UN human rights monitoring bodies, alongside the elaboration of specific rights for older persons in situations of risk contained in regional human rights instruments from the Organization of American States and the African Union. This analysis forms the basis in Section 4 for a concrete proposal and suggested wording for a dedicated article on situations of risk and humanitarian emergencies in the proposed CROP. We then present some final conclusions in Section 5.

2 Older persons in situations of risk and humanitarian emergencies

In the context of humanitarian operations, the UN Inter-Agency Standing Committee (IASC) defines 'protection' as: 'all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law, international refugee law).'[23] This definition highlights the importance of respecting both the letter and spirit of the law, i.e. the need to take an expansive rather than technocratic approach to humanitarian protection. Yet despite the heightened risks that older persons face in emergencies, they often suffer a double invisibility.[24] First, older persons face a relative invisibility within international human rights law in general (as covered in Section 3 below); and secondly, they face specific invisibility during humanitarian crises. As the authoritative Sphere Handbook for Minimum Standards in Humanitarian Response notes: 'Older people are a fast-growing proportion of the population in most countries, but often neglected in humanitarian responses.'[25] The IASC has additionally highlighted that disasters impose an uneven burden on different population groups and that 'pre-existing vulnerabilities and patterns of discrimination usually become exacerbated in situations of natural disasters.'[26] This combination of invisibility and pre-existing vulnerabilities can act as a risk multiplier for older persons in emergency situations.[27]

[23] Inter-Agency Standing Committee, *Policy Paper on the Protection of Internally Displaced Persons*, 1999. The definition was originally adopted by a 1999 Workshop of the International Committee of the Red Cross (ICRC) on Protection and was reiterated most recently in the IASC, *Policy on Protection of Internally Displaced Persons* (November 2024) at 14, available at: https://interagencystandingcommittee.org/operational-policy-and-advocacy-group/iasc-policy-protection-internally-displaced-persons [last accessed 4 January 2026].

[24] Gerard Quinn and Theresia Degener developed the concept of 'double invisibility' in their seminal report for the UN Office for the High Commissioner for Human Rights on the rights of persons with disabilities. See: Quinn and Degener, *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability* (2002) at 24–25.

[25] Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response* (4th edn, 2018) at 13.

[26] Inter-Agency Standing Committee, *Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, The Brookings-Bern Project on Internal Displacement (January 2011) at 2. Note that the phrase 'natural' disasters is now discouraged since: 'A hazard can only become a disaster once it impacts on society or community.' See: UN Office for Disaster Risk Reduction, '#NoNaturalDisasters' (n.d.), available at: www.undrr.org/our-impact/campaigns/no-natural-disasters [last accessed 4 January 2026].

[27] For a nuanced critique of the concept of 'vulnerability' and a call for greater engagement with social science research by lawyers, see: O'Donnell, 'Vulnerability and the International Law Commission's Draft

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2.1 The challenge of defining 'older persons'

In contrast to the well-established definition of a child as someone under the age of 18 years,[28] the commencement of 'old age' is harder to pin down. As Harpur has argued: 'old age is not just a biological stage in the human life cycle; it is a period of life where a person experiences significant inequalities.'[29] In most parts of the world, human life expectancy has expanded dramatically over the last century, *inter alia*, due to improved health care, social security provisions and lifestyle choices. This in turn means that a greater proportion of the population will live into what would generally be considered as 'old' age.[30] However, even within a country there can be significant disparities between different groups regarding life expectancy and what 'healthy aging' means. Moreover, while there may be references to 'age' or 'older persons' in some international human rights treaties, there is no one chronological cut-off point to determine when someone becomes 'old.' As Fredvang and Biggs have noted, the concept of old age is a socially constructed phenomenon based on a multitude of social, economic, and cultural factors.[31] For practical and operational reasons, the United Nations generally uses a benchmark of 60 years to define 'older persons';[32] although Mégret argues this should be viewed as a 'rough indication'[33] and HelpAge International has argued for 'a dynamic definition of older age'[34]—reflecting the reality that old age is both specific to the individual and socially constructed. As Díaz-Tendero has succinctly explained: 'aging is a verifiable or objective fact, while old age is a subjective concept.'[35] We therefore do not define 'older persons' in this article, but recognize the specific risks that older persons may face in situations of risk and humanitarian emergencies.

2.2 Defining 'Situations of Risk and Humanitarian Emergencies'

It is important to elaborate the types of emergency situations which create particular risks for older persons. First, it should be noted that older persons may face a range of serious risks on a daily basis, including ageism, discrimination, neglect, and abuse—as clearly identified by the UN Office of the High Commissioner for Human Rights.[36] Many of these risks can result in serious human rights violations. While cognizant of these daily risks, the particular focus of this article is on potential violations which occur in, or are exacerbated by, crisis or emergency situations. Second, there are differing definitions of a 'humanitarian crisis,' 'disaster' or 'complex emergency' in international law or policy. For example, the International Law Commission's Draft Articles on the Protection of Persons in the event of Disasters defines a 'disaster' as: 'a calamitous event or series of events resulting

Articles on the Protection of Persons in the event of Disasters' (July 2019) 68 *International and Comparative Law Quarterly* 573.

28 As set out in Article 1 of the UN Convention on the Rights of the Child: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.' UN, *Convention on the Rights of the Child* (1989) 1577 UNTS 3.

29 Harpur, 'Old Age Is Not Just Impairment: The CRPD and the Need for a Convention on Older Persons' (2016) 37 *University of Pennsylvania Journal of International Law* 1027 at 1031.

30 As highlighted in the UN's *Madrid International Plan of Action on Ageing* (2002) at paras 1–8.

31 Fredvang and Biggs, 'The Rights of Older Persons: Protection and Gaps under Human Rights Law' (August 2012) *Social Policy Working Paper No.16*, Brotherhood of St Laurence and University of Melbourne Centre for Public Policy at 6.

32 See for example, Dugarova et al., *Ageing, Older Persons and the 2030 Agenda for Sustainable Development* (UN Development Programme, HelpAge International, AARP, 2017) at 7.

33 Mégret, supra n 20 at 43.

34 HelpAge International, supra n 20 at 2.

35 Díaz-Tendero, 'The Riffo-Salinas Case' in: von Bogdandy et al. (eds), *The Impact of the Inter-American Human Rights System* (2024) at 348.

36 OHCHR, supra n 14.

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in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.'[37] Meanwhile, the IASC defines a 'complex emergency' as: 'a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single and/or ongoing UN country programme.'[38] Such definitions provide helpful guidance from both a legal and operational perspective—provided they are not applied in an overly restrictive manner.

Consequently, in her 2019 report on the human rights of older persons in emergency situations, the former UN Independent Expert on the Rights of Older Persons, Rosa Kornfeld-Matte, took a broad definitional approach, referring simply to 'Emergency situations, whether caused by conflict or natural disaster.'[39] Notably, this report preceded the COVID-19 pandemic, which exposed the severe risks to older persons that arise from pandemics. So, using a similar broad-based approach, it is possible to identify a non-exhaustive series of risk scenarios in which specific consideration of the rights of older persons should be given, namely: armed conflict and violence; disasters (including pandemics and other large-scale disease outbreaks); and forced displacement. Each of these three situations can be disaggregated—for example, distinguishing between international and non-international armed conflicts,[40] or differentiating cross-border refugee displacement due to persecution from internal displacement arising from the impacts of a disaster.[41] Across all such scenarios, the risks faced by many older persons are unquestionable and, moreover, can be amplified in ways which do not affect the majority of the population. As Kornfeld-Matte succinctly noted:

> Minor events, such as losing a pair of eyeglasses or a walking cane, may in an emergency setting have a significant impact on older persons, because they limit their mobility and their capacity to adapt to changing conditions, such as during an evacuation.[42]

For brevity, this article uses the shorthand of 'situations of risk' to refer to the complex range of humanitarian crises which can result from armed conflict and violence, forced displacement and disasters. The following section briefly highlights some of the specific impacts faced by older persons in these broad contexts.

2.3 Impacts of situations of risk on older persons

2.3.1 Human rights violations

Between 2013 and 2021, Human Rights Watch undertook research into the rights of older persons in 15 countries experiencing armed conflict and large-scale violence, and

[37] International Law Commission, Draft Articles on the Protection of Persons in the Event of Disasters 2016, Report of the International Law Commission on the work of its sixty-eighth session, 2 May—10 June and 4 July—12 August 2016, A/71/10, Article 3. For in-depth inter-disciplinary discussion of the concept of 'disaster,' see: Aronsson-Storrier and Dahlberg (eds), *Defining Disaster: Disciplines and Domains* (2022).

[38] Inter-Agency Standing Committee, *Definition of Complex Emergencies*, Working Group XVIth meeting (30 November 1994).

[39] Human Rights Council, Enjoyment of all human rights by older persons: Report of the Independent Expert on the enjoyment of all human rights by older persons, 4 July 2019, A/HRC/42/43 at para 18.

[40] International Committee of the Red Cross, *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?*, Opinion Paper (2024).

[41] See: UN, *Convention relating to the Status of Refugees* (1951) 189 UNTS 137; UN, *Guiding Principles on Internal Displacement* (revised 2004); Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Vols. I & II (December 2015).

[42] Human Rights Council, supra n 39 at para 26.

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determined that in such situations not only do older persons face many of the same human rights violations as younger people, but they can face heightened risks specifically due to their age.[43] For example, older persons in Cameroon were found to have faced barriers in registering and accessing humanitarian assistance;[44] while in Gaza older people described the emotional devastation of losing everything they had spent their lives working towards.[45] Notably, older persons can face heightened risk of injury and abuse when they are unable to flee hostilities and violence.[46]

Disasters likewise pose particular threats for some older persons—whether arising from geophysical hazards such as earthquakes or volcanic eruptions, hydrometeorological hazards such as flooding or wildfires, biological hazards such as pandemics, or technological hazards such as fallout from nuclear accidents or industrial pollution.[47] The current UN Independent Expert on the Rights of Older Persons, Claudia Mahler, has highlighted that older persons are more likely to die than younger people from climate-related disasters, such as heatwaves, typhoons, hurricanes and floods.[48] This argument was central to the successful European Court of Human Rights case, *Verein KlimaSeniorinnen Schweiz & Others v Switzerland*, brought by a coalition of Swiss older persons organisations.[49] Mahler has also recognized that older persons face 'disproportionate negative impacts on their health, housing, livelihoods, well-being, and access to food, land, water, and sanitation.'[50] She continued by noting that these impacts can be exacerbated by 'physical, political, economic, and social factors, including poverty, location, lack of transport, and disruption of care and support services, as well as ageism and age-related discrimination.'[51] To this list of exacerbating factors, one could add other indicators of potential vulnerability such as gender, race/ethnicity, disability and immigration status.[52] This intersectionality of

[43] Human Rights Watch, *No One Is Spared: Abuses Against Older People in Armed Conflict* (February 2022).
[44] Ibid. at 4, 33–37.
[45] Ibid. at 30. For recent analysis of the experiences of older persons in Gaza, see: HelpAge International, *Pushed Beyond Their Limits: The Survival of Older People in Gaza* (February 2026); and UN Relief Works Agency for Palestine Refugees in the Near East (UNRWA), *Protection Brief: The Situation of Older Persons in Gaza* (June 2025).
[46] Human Rights Watch, supra n 43 at 38.
[47] The EM-Dat International Disaster Database, run by the Centre for Research on the Epidemiology of Disasters, Université catholique de Louvain, Belgium, is a leading source for statistics on the annual impacts of different types of disasters, available at: www.emdat.be/ [last accessed 4 January 2026]. See also the annual *World Disasters Report* published by the International Federation of Red Cross and Red Crescent Societies (IFRC), available at: www.ifrc.org/documents/all [last accessed 4 January 2026].
[48] UN General Assembly, Human Rights of Older Persons: Note by the Secretary-General—Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler, 25 July 2023, A/78/226 at para 4.
[49] European Court of Human Rights, Application no. 53600/20, Judgment, Grand Chamber (9 April 2024). For discussion, see: Sulyok, 'Introductory Note to *Verein Klimaseniorinnen Schweiz and Others v. Switz.* (Eur. Ct. H.R.)' (2025) 64(1) *International Legal Materials* (American Society of International Law) 1; Bähr et al., '*KlimaSeniorinnen*: lessons from the Swiss senior women's case for future climate litigation' (2018) 9(2) *Journal of Human Rights and the Environment* 194. See also: UN Office of the High Commissioner for Human Rights (UNOHCHR), *UN experts urge Switzerland and other States to step up climate action one year after landmark climate ruling*, Press Release (9 April 2025), available at: www.ohchr.org/en/press-releases/2025/04/un-experts-urge-switzerland-and-other-states-step-climate-action-one-year [last accessed 4 January 2026].
[50] UN General Assembly, supra n 48.
[51] Ibid.
[52] For discussion of the human rights implications for older persons with pre-existing mental health conditions (such as dementia and Alzheimer's disease), as well as the mental health impacts caused by situations of risk on older persons, see: de Mendonça Lima et al., 'Older Persons with Mental Health Conditions in Situations of Risk and Humanitarian Crises: Contribution of the WPA-SOAP and IPA' (2024) 36(1) *International Psychogeriatrics* (2024) 9. See also: O'Donnell, supra n 27.

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vulnerabilities and risk poses a particular threat for many older persons. For example, a rapid needs assessment undertaken by HelpAge International in the Philippines during the height of the COVID-19 pandemic found that 61 per cent of older people had not been able to access services since the start of the pandemic, and 52 per cent reported that they had difficulty in accessing medicines. Moreover, 23 per cent of older people had reduced either the quantity of food consumed or made changes to what they usually ate.[53]

One of the key impacts of both armed conflicts and disasters is the forced displacement of persons. This displacement might be across a relatively short distance within the borders of a country or may lead to a more distant displacement into another country. Moreover, this displacement can occur for a short period of time or may become a long-lasting exile spanning many years. These uncertainties and the risk of multiple enforced movements are difficult for all those displaced, but for older persons with mobility challenges or poor health these can be devastating. The UN High Commissioner for Refugees' Emergency Handbook acknowledges that 'The needs and capacities of older persons are often overlooked in an emergency response because humanitarian actors do not register their presence or because of their weak socio-economic position.'[54] Moreover, the displacement of a community can impact the protective role of traditional knowledge held by older generations. As UNDRR has noted: 'Displacement limits the ability of elders and knowledge holders to maintain the living databases that comprise their knowledge systems and inform sustainable livelihoods.'[55]

2.3.2 The right to consultation and participation

Due to these potential impacts on the rights of older persons, the leading operational guidance for humanitarian organisations, the Sphere Handbook, highlights the need to ensure that older people, along with other potentially vulnerable groups, are consulted and involved at each stage of humanitarian response.[56] To promote good practice in the delivery of services to older persons, the Handbook recommends that humanitarian actors '[c]onsider age-appropriate and accessible services, environments and information, and use age-disaggregated data for programme monitoring and management.'[57] In 2020, the humanitarian research organisation Elrha conducted a gap analysis focusing specifically on the participation of persons with disabilities and older persons in responses to humanitarian crises, conflict, and hazard-related disasters.[58] A key finding of their report was that 'the inclusion of people with disability and older people is still not common practice in humanitarian action.'[59] Moreover, their 2025 follow-on report continued to stress that persons with disabilities and older persons 'often face severe exclusion, neglect and barriers to essential services.'[60] This indicates there is a clear and ongoing failure in humanitarian

[53] HelpAge International and Coalition of Services of the Elderly, Inc., *Covid-19 Rapid Needs Assessment of Older People—The Philippines* (August 2020), available at:www.helpage.org/silo/files/covid19-rapid-needs-assessment--philippines.pdf [last accessed 4 January 2026]. See also: Aquino, *Policy Brief—Older people's lives at risk: Addressing the crisis in the Philippines* (COSE and HelpAge International, 2023), available at: www.helpage.org/silo/files/older-peoples-lives-at-risk-addressing-the-crisis-in-the-philippines.pdf [last accessed 4 January 2026].

[54] UNHCR, supra n 5.

[55] UNDRR, supra n 7 at 52.

[56] Sphere Association, supra n 25 at 13.

[57] Ibid.

[58] Robinson, Marella and Logam, *Gap Analysis: The Inclusion of People with Disability and Older People in Humanitarian Response* (Elrha, 2020).

[59] Ibid. at 67.

[60] Bezzina et al., *Identifying Opportunities for Innovation in Disability and Older Age Inclusion* (Elrha, 2025) at 9. Elrha was established in 2009 to bridge the gap between academics and humanitarian practitioners,

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practice. Older persons can face some of the most severe impacts of crises and emergencies yet are routinely excluded from and invisible in the planning and implementation of risk reduction and response programmes. We suggest that one means to tackle this gap is to ensure that the full and effective participation of older persons, including civil society organisations representing older persons, forms a central principle for the proposed CROP alongside an explicit recognition of the positive contribution older persons can make.

2.3.3 Weak implementation of existing legal obligations

One consequence of the 'invisibility' of older persons is that even existing binding law is not guaranteed to protect older people's rights. Susan Breau convincingly argues that the exceptionally high death rate for persons over 65 during the COVID-19 pandemic was because states failed to implement their positive obligations to protect vulnerable older persons.[61] Due to this glaring lacuna in protection for older generations during the pandemic, Breau argues for both strengthening the legal rights of older persons in disasters and for the adoption of a dedicated international treaty on the rights of older persons.[62] These arguments recognize that while states should certainly be encouraged to implement their existing legal obligations towards older persons, there is also a need for a specific international treaty on the rights of older persons. Such a treaty would play an important role in tackling the continued invisibility of older persons, including in situations of risk. A dedicated treaty would set out specific normative standards alongside a means of compelling duty-bearers to proactively consider the impacts of their actions or inactions on all members of society. The reporting and monitoring provisions which are likely to be included in any new international human rights treaty, such as the CROP, will provide a mechanism of accountability to encourage states to comply with their legal obligations.

3 Insights from international law, standards, and practice

Considering the severe impacts which older persons may face in situations of risk and humanitarian emergencies, in this section, we explore the insights that can be gained from existing international and regional law and standards, alongside the practice of human rights bodies—first in relation to the human rights of older persons generally, then regarding the human rights of all persons in situations of risk, and concluding with a specific focus on the rights of older persons in situations of risk.

3.1 The human rights of older persons

One of the central themes of this article is the relative invisibility of older persons in both international human rights law and in situations of risk. In many different contexts, there is a deep silence when it comes to the rights of older people. As noted by the Office of the High Commissioner for Human Rights in 2021, 'the engagement of international human rights mechanisms with the human rights of older persons has not been systematic, coherent or sustained.'[63] Treaty bodies have engaged with certain aspects of the human rights of older persons, with the extent of that engagement varying between and within committees over time.[64] The two treaty bodies which have been most active in relation to the rights of older

as reflected in its original name: Enhancing Learning and Research for Humanitarian Assistance. More information is available at: www.elrha.org/ [last accessed 4 January 2026].

61 Breau, supra n 21 (2022). See also Breau's critique of states' failure to implement 'all necessary measures' in the context of COVID-19 and elderly disabled persons: Breau, supra n 21 (2024).

62 Breau, supra n 21 (2022) at 56–57.

63 OHCHR, supra n 14 at 1.

64 Ibid. at para 71.

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people are the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) and the Committee on Economic, Social, and Cultural Rights (CESCR Committee).

The CESCR Committee has specifically addressed older persons in two of its general comments. First, in 1995, the Committee adopted a detailed General Comment on older persons and economic, social, and cultural rights,[65] subsequently described by Frédéric Mégret as 'one of the most high profile signals' that the condition of the elderly is an issue for mainstream treaty bodies.[66] The context for the Comment was the ageing of the population globally, and the associated impact on the social and economic structures of societies, especially in terms of social security.[67] Reference is made to the 1991 UN Principles for Older Persons, and the five themes of independence, participation, care, self-fulfillment, and dignity.[68] The Committee emphasizes that older persons are a heterogenous group, as 'varied as the rest of the population.'[69] The Committee structures its Comment around the rights in ICESCR, explaining how particular features of each right impact older persons. For example, older persons have the right to benefit from educational programmes, but it is also important to make 'the know-how and experience of older persons available to younger generations.'[70] The Committee notes that 'even in times of severe resource constraints, States parties have the duty to protect the vulnerable members of society'.[71] Although there is no specific reference to disasters or emergency situations, the same point could easily be made. General Comment No. 6 is 'an important frame of reference' for the rights of older persons, but it does reflect 'the thinking of its time' and some references now appear somewhat out of step with current approaches to the rights of older persons.[72]

The other general comment of the CESCR Committee which specifically references older persons is General Comment No. 19 on social security.[73] 'Old age' is listed as one of the nine principal branches of social security,[74] and there are references to the need for special facilities for older persons,[75] legitimate distinctions on the grounds of age,[76] the fact that older persons may have difficulty accessing social security,[77] the different life expectancies of men and women,[78] and the need for a universal pension in countries with a large informal economy.[79] The Committee is also alive to the importance of social security in the context of emergencies and disasters, such as 'crop or natural disaster insurance for small farmers,'[80] and an obligation on states to ensure that the social security system can respond 'in times of emergency, for example during and after natural disasters, armed conflict, and crop failure.'[81]

[65] UN, Committee on Economic, Social and Cultural Rights, General Comment No. 6: The economic, social and cultural rights of older persons, 8 December 1995, E/C.12/1995/16/Rev.1.
[66] Mégret, supra n 20 at 48.
[67] Ibid. at paras 1–3.
[68] UN General Assembly, Res 46/91, Implementation of the International Plan of Action on Ageing and related activities, 16 December 1991, A/RES/46/91 ('UN Principles for Older Persons').
[69] CESCR Committee, supra n 65 at para 16.
[70] Ibid. at para 36.
[71] Ibid. at para 17.
[72] As noted in: OHCHR, supra n 14 at para 73.
[73] UN Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security (art 9), 4 February 2008, E/C.12/GC/19.
[74] Ibid. at para 15.
[75] Ibid. at para 28.
[76] Ibid. at para 29.
[77] Ibid. at para 31.
[78] Ibid. at para 32.
[79] Ibid. at para 34.
[80] Ibid. at para 28.
[81] Ibid. at para 50.

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The CEDAW Committee is the other committee which has been active in relation to older persons' rights. In 2010, it adopted General Comment No. 27 on older women and protection of their human rights.[82] This Comment recognizes that older women often face multiple forms of discrimination,[83] but at the same time are not a homogenous group, with a great diversity of experience, knowledge, ability, and skills.[84] For example, in the context of access to healthcare, the Committee recognizes the intersectional vulnerability of older women who are forcibly displaced.[85] The impact of climate change and disasters is also referenced, including vulnerability in the context of inequitable distribution of aid and resources.[86] Drawing in part on states' obligations to adopt temporary special measures under Article 4 of CEDAW and women's rights to participate in political and public life under Article 7,[87] the Committee makes a number of recommendations to states, including:

1) a requirement to ensure the development and advancement of women of all ages in times of both peace and conflict, as well as in the event of any 'man-made and/or natural disaster.'[88]
2) a requirement to 'ensure that climate change and disaster risk-reduction measures are gender-responsive and sensitive to the needs and vulnerabilities of older women' and 'facilitate the participation of older women in decision-making for climate change mitigation and adaptation.'[89]
3) a requirement to 'pay special attention to the violence suffered by older women in times of armed conflict, the impact of armed conflicts on the lives of older women, and the contribution that older women can make to the peaceful settlement of conflicts and to reconstruction processes.'[90]

Despite these contributions by the CESCR Committee and the CEDAW Committee, the current international human rights framework provides only 'fragmented and inconsistent coverage' of the human rights of older persons in both law and practice.[91] Not only are there few explicit prohibitions of discrimination on the basis of age in the international human rights framework, 'there is little to show that a sophisticated approach to ageing and discrimination has been elaborated.'[92] This reflects the relative invisibility which exists for all aspects of the rights of older persons, including older persons in situations of risk.[93]

3.2 Human rights in situations of risk and humanitarian emergencies

In terms of human rights in situations of risk, four treaty bodies have been active in this area—the Disabilities Committee, the CEDAW Committee, the Committee on the Rights of the Child and the Human Rights Committee.

[82] UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27.
[83] Ibid. at paras 1, 9, 13, 31
[84] Ibid. at para 8.
[85] Ibid. at para 18.
[86] Ibid. at para 25.
[87] Ibid. at para 29.
[88] Ibid. at para 30.
[89] Ibid. at para 35.
[90] Ibid. at para 38.
[91] OHCHR, supra n 14 at 1.
[92] Ibid. at para 31.
[93] Ibid. at para 55.

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The Convention on the Rights of Persons with Disabilities (CRPD), uniquely amongst the core international human rights treaties, has a dedicated article on situations of risk and humanitarian emergencies.[94] What is now Article 11 originated with a proposal from the Costa Rican delegation following the 2004 Indian Ocean tsunami.[95] Under the heading 'Situations of risk and humanitarian emergencies,' Article 11 sets out an obligation on states to take 'all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.'[96] In its role in monitoring states' implementation, the CRPD Committee has made some notable recommendations on state practice. Almost all its concluding observations on states' reports address the implementation of Article 11,[97] and the Committee is currently engaged in drafting a new General Comment specifically on Article 11.[98]

A first observation on the work of the CRPD Committee is that it views the UN Sendai Framework for Disaster Risk Reduction 2015–2030[99] as an integral text for understanding the obligations on states that arise under Article 11 and has made multiple recommendations to states to take action to comply with both the Sendai Framework and Article 11.[100] The CRPD Committee also makes frequent reference to the key principles underpinning human rights for persons with disabilities (PWD), such as inclusivity, participation, accessibility and universal design.[101] This includes the importance of inclusivity of PWD in disaster risk reduction and emergency management plans, and the participation of PWD or their representative organisations.[102] The Committee's comments on accessibility concern both accessibility to emergency services and infrastructure, and also the importance of access to information in accessible formats.[103] In the context of recovery efforts and 'building back better,' there is regular reference to the need for universal design principles. The importance of data disaggregated by disability is another key theme of the Committee's comments under the umbrella of Article 11.[104]

[94] UN General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007—adopted without a vote, A/RES/61/106.

[95] Crock, 'The Protection of Vulnerable Groups' in Breau and Samuel (eds), *Research Handbook on Disasters and International Law* (2016) at 399–400.

[96] Article 11 CRPD reads in full: 'States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.'

[97] Gledhill and Baird, 'Ensuring a Disability Perspective in Disaster Law: The Contribution of the Committee on the Rights of Persons with Disabilities' (2023) 4 *Yearbook of International Disaster Law* 432 at 433.

[98] The Committee on the Rights of Persons with Disabilities held a day of general discussion and call for written submissions on Article 11 of the Convention in March 2023. The outcome is still pending. More information is available at: www.ohchr.org/en/calls-for-input/2023/day-general-discussion-and-call-written-submissions-article-11-convention [last accessed 4 January 2026]. See also: *Joint Submission from the Irish Centre for Human Rights and the Centre for Disability Law and Policy to the Draft General Comment on Persons with Disabilities in Situations of Risk and Humanitarian Emergencies (Article 11 of the Convention on the Rights of Persons with Disabilities)*, 14 February 2023, Barry, Irish Centre for Human Rights and the Centre for Disability Law and Policy, School of Law, University of Galway, Ireland; and UN Office for Disaster Risk Reduction, *Persons with Disabilities in Situations of Risk: A Scoping Study on Article 11 of the Convention on the Rights of Persons with Disabilities* (December 2022).

[99] UN, Sendai Framework for Disaster Risk Reduction 2015–2030 (2015) A/CONF.224/CRP.1.

[100] Gledhill and Baird, supra n 97 at 442. Notably, para 36(iv) of the Sendai Framework highlights that 'Older persons have years of knowledge, skills and wisdom, which are invaluable assets to reduce disaster risk, and they should be included in the design of policies, plans and mechanisms, including for early warning.'

[101] Article 3 of the CRPD sets out a list of eight general principles on which the Convention is based.

[102] Gledhill and Baird, supra n 97 at 444–445.

[103] Ibid. at 447–449.

[104] Ibid. at 451–453.

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The CRPD Committee has also been alive to the situation of PWD who face multiple and intersecting forms of discrimination and their particular needs and rights. It has also looked at the impact of specific impairments or what it has termed 'differential disparities,' and the need for differential treatment and reasonable accommodation according to the specific impairment.[105] A final notable feature of the Committee's work is the way it has sought to align its comments with not only the Sendai Framework, but also with other international frameworks and standards which bear upon PWD in situations of risk, including the 2016 World Humanitarian Summit,[106] the UN Guiding Principles on Internal Displacement,[107] and the Charter on Inclusion of PWD in Humanitarian Action.[108] This effort to ensure 'coherence across agendas'[109] and minimize fragmentation of international law and standards is commendable, and should be reflected in the ongoing work developing the CROP.

As noted, the CRPD Committee is currently drafting a General Comment on Article 11 which will set out clear guidance to states and other actors as to its expectations in this area. This General Comment is eagerly awaited as it will provide a useful benchmark for addressing the rights of vulnerable individuals and groups in situations of risk.[110]

In addition to the work undertaken by the CRPD Committee, the CEDAW Committee has addressed situations of risk in the context of disasters and climate change by way of its General Recommendation No. 37 on the Gender Related Dimensions of Disaster Risk Reduction in the Context of Climate Change.[111] Although this General Recommendation has not been without critique, especially in relation to its use of the concept of 'vulnerability' and its stereotyping of women,[112] as well as its specific focus on climate-related disasters rather than all forms of disaster, it is another example of how a treaty body is attempting to engage with a particular situation of risk for a specific population group.[113] For instance, the Committee has emphasized the importance of three general principles of CEDAW in the context of disasters and climate change, i.e. substantive equality and non-discrimination, participation and empowerment, and accountability and access to justice. The Committee has also noted that situations of crisis exacerbate existing gender inequalities and compound intersecting forms of discrimination, including for older women.[114] However, just as this

[105] Ibid. at 453.

[106] See, for example: UN General Assembly, Outcome of the World Humanitarian Summit: Report of the Secretary-General, 23 August 2016, A/71/353.

[107] UN, *Guiding Principles*, supra n 41.

[108] The Charter on Inclusion of Persons with Disabilities in Humanitarian Action was developed in advance of the 2016 World Humanitarian Summit by over 70 stakeholders from States, UN agencies, the international civil society community and global, regional and national organisations of persons with disabilities. More information is available at: https://humanitariandisabilitycharter.org/ [last accessed 4 January 2026]. See also: Gledhill and Baird, supra n 97 at 457–458.

[109] UN, supra n 99 at 5 and para 28(b).

[110] The tentative and provisional outline of the draft general comment was circulated in advance of the day of general discussion in March 2023. See: CRPD, supra n 98.

[111] CEDAW Committee, General Recommendation No. 37 on Gender Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, 7 February 2018, CEDAW/C/GC/37.

[112] Mayrhofer, 'Gender (In)equality, Disaster and Human Rights – the CEDAW Committee and General Recommendation No. 37' (2018) 1 *Yearbook of International Disaster Law* 233.

[113] The CEDAW Committee has also examined the gender-related aspects of armed conflict. Notably there are only two passing references to older persons in this Recommendation: one as part of a list of women who are especially vulnerable to increased economic hardship and one in the context of the specific risks and particular needs of internally displaced and refugee women. See: CEDAW Committee, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations, 1 November 2013, CEDAW/C/GC/30.

[114] CEDAW Committee, supra n 111 at para 2.

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higher vulnerability to disaster risk and climate change is economically, socially and culturally constructed, so it can be reduced by specific measures.[115] The Committee details a number of specific measures in its Comment. For example, in relation to the right to health, states are encouraged to invest in climate and disaster resilient health systems and services and allocate resources to the underlying determinants of health, such as clean water, adequate nutrition and sanitation facilities.[116] The Committee alludes to the challenge of overlapping frameworks and approaches in the context of disaster risk reduction and climate change adaptation by noting its intention to 'contribute to coherence, accountability and the mutual reinforcement of international agendas' by focusing on the impacts of climate change and disasters on women's human rights.[117] As we discuss further below, avoiding fragmentation in normative standards and seeking policy coherence across different frameworks is also our aim.

Although the Convention on the Rights of the Child (CRC) does not contain a general article on situations of risk, Article 22(1) sets out a specific right for refugee and unaccompanied children to 'receive appropriate protection and humanitarian assistance' in the context of forced displacement. Meanwhile, the Committee on the Rights of the Child (CtteRC) has examined child-specific rights in the context of the environment and climate change. In General Comment No. 26, the CtteRC makes several references to climate-related disasters, disaster risk and disaster risk reduction.[118] For example, the Comment notes that 'All children should be equipped with the skills necessary to face expected environmental challenges in life, such as disaster risks'[119] and that 'In adaptation measures, including disaster risk reduction, preparedness, response, and recovery measures, due weight should be given to the views of children.'[120] Both these requirements are equally relevant for older persons.

Finally, in its work on the right to life in Article 6 of the ICCPR, the Human Rights Committee notes that 'environmental degradation, climate change and unsustainable development' are now among 'the most pressing and serious threats' to the right to life.[121] The Committee has specifically noted that states should develop 'contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters that may adversely affect enjoyment of the right to life such as hurricanes, tsunamis, earthquakes, radioactive accidents and massive cyberattacks resulting in disruption of essential services.'[122] We note that while protecting the right to life should be the core basis of a dedicated provision on situations of risk, there are broader aspects of rights in such situations that also need consideration—as evidenced by the variety of comments made by UN human rights bodies set out above.

3.3 Protecting the rights of older persons in situations of risk

We now turn to consider two regional human rights treaties on the rights of older persons. As well as providing a precedent for a future UN Convention on the Rights of Older Persons, these regional treaties both make specific provision for situations of risk and

[115] Ibid. at para 6.
[116] Ibid. at para 68(b).
[117] Ibid. at para 12.
[118] UN, Committee on the Rights of the Child, General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, 22 August 2023, CRC/C/GC/26.
[119] Ibid. at para 53.
[120] Ibid. at para 102.
[121] UN, Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 3 September 2019, CCPR/C/GC/36 at para 62.
[122] Ibid. at para 26.

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humanitarian emergencies. Building on Article 11 CRPD, these standards highlight the increasing recognition of the need for express provision regarding situations of risk in future human rights treaties.

3.3.1 Inter-American convention on protecting the human rights of older persons (2015)

States across the Americas have been at the forefront of promoting the rights of older persons since the inception of the United Nations. For example, Argentina first presented a draft resolution to the UN General Assembly for an elderly-specific treaty in 1948;[123] while the 1988 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights expressly addresses the 'Protection of the Elderly' in Article 17.[124] It is perhaps therefore no surprise that in 2015, the Organization of American States (OAS) adopted the Inter-American Convention on Protecting the Human Rights of Older Persons, the first dedicated international treaty on the rights of older persons.[125] Díaz-Tendero notes that this was 'a milestone, not only in the region but also the world.'[126] Motivation for the Convention included the 'invisibility of older persons' and the fact that the existing legal framework for older persons was 'fragmented, insufficient and unable to guide regulatory actions and public policies.'[127] Negotiation of the text was led by Argentina, Chile and Panama, with agreement achieved after only three years. However, Canada and the United States opposed the Convention in its entirety, with other states expressing concerns about particular issues. The Convention has been in force since January 2017 and, as of December 2025, has 13 states parties (out of the 35 OAS member states).[128]

Of particular relevance for the proposed CROP is the fact that Article 29 of the Convention makes specific provision for 'Situations of risk and humanitarian emergencies':

> States Parties shall adopt all necessary specific measures to ensure the safety and rights of older persons in situations of risk, including situations of armed conflict, humanitarian emergencies, and disasters, in accordance with the norms of international law, particularly international human rights law and international humanitarian law.

[123] Kanter, 'The United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People Under International Law' (2009) 25 *Georgia State University Law Review* 527, at 532.

[124] Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (1988) OAS, Treaty Series, No. 69 ('Protocol of San Salvador').

[125] Organization of American States (OAS), *Inter-American Convention on Protecting the Human Rights of Older Persons* (2015). Of note, OAS member states comprise the majority of countries which have pledged to support the development of the CROP via the Group of Friends of Older Persons. See: *NGO Committee on Ageing*, supra n 19.

[126] Díaz-Tendero, supra n 35 at 350.

[127] Toro Utillano, 'The Inter-American Convention on Protecting the Human Rights of Older Persons' in von Arnauld, von der Decken and Susi (eds.), *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* (2020) at 173. See also: Rodríguez-Pinzón, 'Introductory Note to Inter-American Convention on Protecting the Human Rights of Older Persons' (2016) 55 *International Legal Materials* 985.

[128] Signature and ratification status is available at: www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons_signatories.asp [last accessed 4 January 2026]. The most recent ratification was by Saint Kitts and Nevis on 22 April 2025.

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> States Parties shall adopt assistance measures specific to the needs of older persons in preparedness, prevention, reconstruction, and recovery activities associated with emergencies, disasters, and conflict situations.
>
> States Parties shall foster the participation of interested older persons in civil protection protocols in the event of natural disasters.

While there have not yet been any judgments from the Inter-American Court of Human Rights addressing situations of risk under Article 29, the Inter-American Convention on Protecting the Human Rights of Older Persons has been referenced in case law. For example, the first time that the Court relied on the Convention to interpret the American Convention on Human Rights was in the case of *Poblete Vilches* et al. *v Chile* (2018) in the context of the right to health for older persons.[129] In 2019 the Inter-American Commission on Human Rights (IACHR) established a Rapporteur on the Rights of Older Persons since 'the protection of the rights of older people continues to be a priority challenge in the region and … demands close monitoring.'[130] Notably, following the recent Advisory Opinion on the climate emergency from the Inter-American Court of Human Rights,[131] the IACHR issued a press release reiterating that the Convention requires that 'all necessary measures must be taken to protect the integrity and address the needs of older persons when preparing for emergencies and disasters, adopting prevention measures, and implementing reconstruction and recovery efforts.'[132]

Although there has been limited academic commentary interrogating Article 29, Toro Utillano points out that most of the articles of the Convention are drafted so as to first grant older persons specific rights before setting out obligations on states; with the one notable exception being Article 29 which focuses primarily on the obligations of states.[133] Whilst one can query why Article 29 takes a different approach to the rest of the Convention, these obligations are clearly and unambiguously set out—in situations of risk states must adopt all necessary measures to ensure the safety and rights of older persons, including measures specifically tailored to their needs. There is also recognition of the need for coherence between different branches of international law. Article 29 therefore balances a state's specific legal obligations with broad principles (such as fostering participation) which provides a helpful foundation for a similar provision in the proposed CROP. Nevertheless, there are certain shortcomings in the text of Article 29. For example, the reference to participation is limited to 'interested' older persons in the context of 'civil protection protocols' for disasters (i.e. not other situations of risk). Likewise, no express reference

[129] Inter-American Court of Human Rights, Judgment of March 8, 2018 at paras 125–132. For discussion of this case, see Arenas Massa, 'The Inter-American Convention on the Protection of the Human Rights of Older Persons – a step towards an international convention on the rights of older people?' in Westwood and Knauer (eds), *Research Handbook on Law, Society and Ageing* (2024) 28 at 35–36. For discussion of Bolivian case law which draws on the Inter-American Convention on the Rights of Older Persons, see: Díaz-Tendero, supra n 35.

[130] The current Rapporteur, Gloria Monique de Mees, was appointed in January 2024 for a four-year term. More information on the Rapporteurship is available at: www.oas.org/en/iachr/jsForm/?File=/en/iachr/r/pm/default.asp [last accessed 4 January 2026].

[131] Inter-American Court of Human Rights, Advisory Opinion AO-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia, *Climate Emergency and Human Rights*.

[132] Inter-American Commission on Human Rights, 'States must ensure the safety of older persons in climate emergency', press release, 1 October 2025, available at: www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2025/199.asp [last accessed 4 January 2026].

[133] Toro Utillano, supra n 127 at 177.

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is made to the positive contribution which older persons can make in the preparation, planning, and response to crises.

Nevertheless, as the first binding treaty focused solely on the human rights of older persons, the Inter-American Convention represents a 'substantial normative advance' in international human rights law;[134] although the low level of ratification to date is disappointing considering the leading role the region has played in promoting the rights of older persons.[135]

3.3.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (2016)

In 2016, shortly after the treaty action by the OAS, the African Union also adopted special protections for the rights of older persons. Chirwa and Rushwaya note that although older persons occupy a 'special place' in African societies given their role as custodians of culture, traditions and moral values, and the way they form a bridge between past and current generations, older persons increasingly face vulnerability in Africa.[136] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons,[137] like its OAS counterpart, focuses on the human rights of older persons. It is built on solid foundations since the African Charter was the first human rights instrument in the world to expressly recognize and protect older persons' rights as a distinct category. Article 18(4) of the 1982 Charter provides that 'the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.'[138] The Protocol which amplifies this provision came into force in November 2024, and as of December 2025, it had been ratified by 12 states (out of 55 AU member states).[139] Unlike the Inter-American Convention, the AU Protocol is framed primarily in terms of obligations on states rather than rights of older persons themselves. Chirwa and Rushwaya thus describe the Inter-American Convention as 'significantly superior' because, with the exception of Article 29, it mostly sets out the rights of older persons before describing the obligations of states.[140]

However, in a similar manner to the Inter-American Convention, Article 14 of the AU Protocol makes specific provision for the 'Protection of older persons in conflict and disaster situations' and provides:

States Parties shall:

1) ensure that, in situations of risk, including natural calamities, conflict situations, during civil strife or wars, Older Persons shall be among those to enjoy access, on

[134] Onuma, 'Dialogue in Silence: Inter-American and Brazilian Protection of the Human Rights of Older Persons' (2024) 11(1) *Groningen Journal of International Law* 167 at 173.

[135] For discussion of the substantive and procedural development of the Inter-American Convention between 2002 and 2015, see: Montes-de-Oca et al., 'Older Persons and Human Rights in Latin America and the Caribbean' (2018) 2(2) *International Journal on Ageing in Developing Countries* 149.

[136] Chirwa and Rushwaya, 'Guarding the Guardians: A Critical Appraisal of the Protocol to the African Charter on the Rights of Older Persons in Africa' (2019) 19 *Human Rights Law Review* 53 at 53.

[137] African Union (AU), *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons* (2016). See also: HelpAge International, 'A new era for older people in Africa: AU Protocol on Rights of Older Persons comes into force' (1 November 2024), available at: www.helpage.org/news/a-new-era-for-older-people-in-africa-au-protocol-on-rights-of-older-persons-comes-into-force/ [last accessed 4 January 2026].

[138] Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* (Banjul Charter), (1981), OAU Ref: CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

[139] Signature and ratification status is available at: https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons [last accessed 4 January 2026]. The most recent ratification was by Niger on 24 January 2023.

[140] Chirwa and Rushwaya, supra n 136 at 62.

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a priority basis, to assistance during rescue efforts, resettlement, repatriation, and other interventions; and
2) ensure that Older Persons receive humane treatment, protection, and respect at all times and are not left without needed medical assistance and care.

While the structure and wording of Article 14 is quite different to Article 29 of the Inter-American Convention, many of the same concepts are apparent, such as older persons' right to assistance, the need to ensure respect and protection, and that older persons may have specific needs. There has been limited commentary on Article 14 of the African Protocol. However, writing before adoption of the Protocol, Yueng Sik Yuen points out that older persons are 'the single group most grossly affected by war and internal conflicts in Africa.'[141] He identifies 'security from armed conflict' as one of three key essential elements to ensure the well-being of older persons in Africa alongside social security and food security.[142] Chirwa and Rushwaya likewise note that common problems affecting the African continent are 'natural disasters, armed conflicts, famine and natural calamities.'[143] Tracing the history of other African law on armed conflict and disasters, they acknowledge 'there are more groups than just older persons that need special protection during armed conflict and disasters, groups such as women, children, and persons with disabilities.'[144] They suggest that this is the reason for the provision in Article 14(1) for older persons to be 'among those' who are to receive assistance 'on a priority basis,' and argue that this reference to priority is an advance on the Inter-American Convention.[145]

Considering the range of existing provisions in regional and international human rights law protecting the rights of older persons in general, and in situations of risk in particular, there is a strong argument for the inclusion of a dedicated provision on situations of risk and humanitarian emergencies in the proposed CROP. The following section therefore presents a draft article synthesized from the existing legal frameworks.

4 Proposed article on situations of risk and humanitarian emergencies for the UN Convention on the Rights of Older Persons

Based on our above analysis, we now propose for consideration by states, human rights practitioners and advocates for the rights of older persons some specific wording for inclusion in the proposed UN Convention on the Rights of Older Persons. Before setting out our suggested text, it is necessary to contextualize it with some preliminary remarks.

One threshold issue for consideration in the drafting process is the extent to which the core principles underpinning the human rights of older persons generally should be reflected in the situations of risk provision or instead be left to the umbrella provisions of the CROP. How this balance is achieved will ultimately depend on drafting choices and negotiations between states regarding an overall draft text. However, our preferred approach—at least at this early stage—is that five core principles, namely dignity, autonomy/independence, equality, non-discrimination and participation, be included and/or reiterated in the situations of risk provision.[146] These five principles, drawn from existing

[141] Yeung Sik Yuen, 'The Rights of Older Persons and Persons with Disabilities in Africa' in Ssenyonjo (ed.), *African Regional Human Rights System* (2011) 213 at 222.
[142] Ibid. at 221.
[143] Chirwa and Rushwaya, supra n 136 at 77.
[144] Ibid. at 78.
[145] Ibid.
[146] Reflecting the need for coherence across international law texts, any principles elaborated in the CROP should also be read in conjunction with core principles of international law, such as humanity,

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human rights documents, are selected because they are of most relevance in situations of risk. For example, the 1991 UN Principles for Older Persons address: independence, participation, care, self-fulfillment, and dignity.[147] CEDAW General Recommendation No. 37 covers substantive equality and non-discrimination, participation and empowerment, and accountability and access to justice;[148] while key principles underpinning the CRPD are inclusivity, participation, accessibility, and universal design.[149] We include these five principles in our draft provision because situations of risk often result in curtailment of rights—in the name of the emergency nature of the situation—and, while this may sometimes be justified (in accordance with strict derogation provisions), it is useful to remind states that dignity, autonomy/independence, equality, non-discrimination, and participation remain fundamental to the protection of older persons during crises. The COVID-19 pandemic provides a stark example of when certain rights, such as freedom of movement, were legitimately constrained due to the extent of the threat posed to society by the disease. However, the experience of older persons during the pandemic, as individuals and as a group, also highlights the need for these core principles to be respected at all times.[150]

Having put a stake in the ground for those five principles, we note that there are three important matters which are not directly reflected in our proposed provision. First, as noted by Mégret, older persons present a paradox—on the one hand they 'can appear as a particularly powerful group in society,' but on the other they 'can be seen as a particularly vulnerable segment of the population.'[151] This paradox is apparent as much in situations of risk as in other contexts, with some older persons acting as reservoirs of resilience who contribute significantly to response and recovery efforts, while others are especially vulnerable. We have not sought to capture this resilience/vulnerability dichotomy explicitly in the proposed provision, but our proposal does expressly reference the need for participation and the positive contribution which older persons can make. This is an important issue to keep in mind throughout the negotiation process for the proposed CROP. A second—and related—issue is that of intersectional or compounding forms of discrimination. Some older persons may be especially vulnerable due to multiple and intersecting forms of discrimination in situations of risk due to other personal characteristics such as gender, ethnicity, disability, religion, sexual orientation, socio-economic status or immigration status. However, aside from reference to the over-arching principles of equality and non-discrimination, these compounding forms of discrimination are not explicitly referenced in the proposed provision. This is, however, a matter that will need to be addressed across the CROP as a general issue. The third matter not specifically addressed in our proposed provision is the need for data disaggregated by age. One of the clarion calls of the human rights treaty bodies charged with monitoring population-based treaties

impartiality and neutrality in armed conflict, *non-refoulement* for refugees, and the general principles of international cooperation and solidarity. A summary of the International Law Commission's ongoing work examining general principles of law is available at: https://legal.un.org/ilc/summaries/1_15.shtml [last accessed 4 January 2026].

147 UN Principles, supra n 68.

148 CEDAW Committee, supra n 111.

149 UN, CRPD, supra n 94.

150 Breau, supra n 21 (2024). For analysis of the impacts of the pandemic on another potentially vulnerable group in society, see: Mulder, Simm and Williams, 'Regime Interaction and the Protection of Refugees during COVID-19' (2022) 3 *Yearbook of International Disaster Law* 92.

151 Mégret, supra n 20 at 45–46.

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such as CEDAW, CRC, and CRPD, is the importance of disaggregated data.[152] This will undoubtedly be an issue in the older persons context as well, especially given the existing 'relative invisibility' of older persons under current human rights frameworks. However, the issue of data will be relevant to all areas of the CROP, and so we recommend that it be addressed at an umbrella level.

Finally, we note that we have drawn on the text of regional and international instruments and standards as much as possible so that the proposed provision builds on existing law and current state and treaty body practice—in other words, an attempt at codification, rather than progressive development. We do this in order to promote coherence in international law and avoid further fragmentation.[153] Competing and overlapping frameworks are not helpful, so we have sought to align the situations of risk provision with existing frameworks and standards discussed above as far as possible. For example, we took as our starting point the wording and structure of Article 29 of the Inter-American Convention.

Having said that, where choices have had to be made between two conflicting texts or approaches, we have also drawn on the work of expert representative bodies such as HelpAge International. More than ten years ago, as part of a broader analysis of the substantive content for the proposed CROP, HelpAge International elaborated a comprehensive set of specific rights for older persons.[154] In addition to highlighting the specific threats that older persons may face in situations of risk, for example where gender, age, sexual orientation, and/or marital status-related discrimination intersects or accumulates over time, their proposal establishes a list of rights to which all older persons should be entitled in emergency contexts. In particular, it provides for the following rights:

a) Identification of, and consultation with, older people to assess their needs for assistance and protection, and their capabilities for recovery, as part of the design and delivery of appropriate humanitarian responses, including resettlement and durable solutions, prevention, and response to rights violations, promotion of a protective environment, peace, and reconciliation efforts as well as economic recovery and support to families;
b) Access to appropriate, accessible, safe, dignified, and adequate essential services including assistance with registration and documentation requirements, food, water and sanitation, fuel, shelter, opportunities for family reunification, transport, health care, psycho-social and nutrition support, livelihood intervention on an equal basis with others;
c) Where appropriate, and based on assessment of older people's needs, delivery of services designed and adapted to address the specific requirements of older people relating to their age, for example in health care, psycho-social and nutrition assistance;
d) Access to information about the emergency, the changing security situation, and the availability of humanitarian assistance and rights protection services on an equal basis with others;
e) Responsive disaster preparedness planning, policy, and legislation to reduce older people's risk in disasters.[155]

[152] The gap analysis undertaken by Elrha in 2020 specifically noted that: 'Despite recognition of the need for age (and gender) disaggregated data in the humanitarian sector, this data is still not routinely collected or used to inform humanitarian decision-making.' See: Robinson et al., supra n 58 at 39.
[153] UN General Assembly, International Law Commission, Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law, Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, 13 April 2006, A/CN.4/L.682.
[154] HelpAge International, supra n 20.
[155] Ibid. at 8–9.

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This HelpAge International list perhaps underestimates somewhat the resilience of older persons and suggests a needs-based rather than a rights-based approach, but it nevertheless remains a useful touchpoint for good practice, and we have drawn on it to fill gaps in existing texts. Moreover, in-depth analysis by HelpAge International and other expert bodies, such as Elrha,[156] is likely to provide important interpretative guidance to the CROP if, and hopefully when, it is adopted.

We therefore propose the following text for a dedicated article on situations of risk and humanitarian emergencies for the CROP:

Proposed Article XX: Situations of risk and humanitarian emergencies

1) The rights of older persons in situations of risk and humanitarian emergencies will be respected, protected, and fulfilled at all times.
2) States Parties shall adopt all necessary measures to ensure the protection, safety, and rights of older persons in situations of risk and humanitarian emergencies, including armed conflict, forced displacement, and disasters, in accordance with the norms of international law.
3) In all preparedness, prevention, response, reconstruction, and recovery activities associated with situations of risk and humanitarian emergencies, State Parties will ensure:
   a) the dignity, autonomy, independence, equality, and non-discrimination of older persons;
   b) the full and effective participation of older persons and their representative organisations, and the recognition of the positive contribution they can make; and
   c) access to appropriate, accessible, safe, dignified, and adequate essential services specific to the needs of older persons.

In developing this proposed article, in addition to existing law and practice discussed in Section 3, we were also mindful of the broad approach taken in the International Law Commission's Draft Articles on the Protection of Persons in the event of Disasters, Article 5 of which states: 'Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law.'[157] In the associated Commentaries, the Commission argues that drawing up an exhaustive list of rights could lead to an interpretation that rights not mentioned were not applicable.[158] This is a valid concern, but it should be noted that the Draft Articles are not a human rights treaty per se. In the context of the proposed CROP, we believe it is important to begin explicitly with reference to the rights of older persons in situations of risk, but to avoid any uncertainty or lacunae in protection these should be read in conjunction with existing international law norms referenced in the second paragraph and the more specific provisions set out in the third paragraph.

5 Conclusion

Based on the foundation of the international bill of rights, the development of specialized international human rights treaties for particular groups within society, such as children, women and persons with disabilities, helps to raise awareness of the risks, rights, and

[156] See, for example: Bezzina et al., supra n 60; Robinson et al., supra n 58.
[157] ILC, supra n 37, Article 5: Human Rights.
[158] UN, *Draft Articles on the Protection of Persons in the event of Disasters, with Commentaries* (2016) at 13.

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obligations at play in specific contexts. For too long, older persons have suffered a relative invisibility in international human rights law and practice. The adoption of UN General Assembly Resolution 58/13 to advance the negotiations for a legally binding international instrument to protect the rights of older persons is therefore to be welcomed.

One can argue that the task of drafting international legal texts is best left to the experts in the legal departments of Ministries of Foreign Affairs and other governmental negotiators. However, the existence of a 'zero draft' text is an important starting point for all parties. Evidence shows that older persons can be severely impacted during all types of humanitarian crisis, so it is essential that their rights are respected and protected at such critical times. Reducing the risks faced by older persons in such situations will require a combination of binding normative standards, monitoring, and accountability mechanisms and operational good practice. We therefore hope that our proposal and wording prompts debate and critique from a variety of stakeholders, not least regarding the need to include a dedicated provision on situations of risk and humanitarian emergencies in the new UN Convention on the Rights of Older Persons.

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Human Rights Law Review, 2026, Vol. 26, No. 2, ngag002
https://doi.org/10.1093/hrlr/ngag002
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