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By: Dug Cubie

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Disasters, International Law, and the Rights of Older Persons: New Developments

Introduction

Recent years have seen the convergence of two strands of research and advocacy relating to older persons. First, there has been an emphasis on advancing a new UN Convention on the Rights of Older Persons to recognize the specific needs of older persons from a rights perspective. Second, the disproportionate impact of disasters on older persons has been increasingly acknowledged, alongside appreciation of older persons' expertise and contributions to support disaster preparedness, response and recovery. Notably, a key theme of World Elder Abuse Day on 15 June 2024 was ensuring that older persons are not left behind as a result of global emergencies such as conflict, disasters, climate change, and pandemics.

This *Insight* aims to explore the linkages between older persons, human rights and disasters, and concomitant recent developments in international law. It begins with an overview of the current state-of-play regarding the proposed UN Convention on the Rights of Older Persons, before examining the impact of disasters on older persons and existing international legal protections. It will conclude with some observations on how best to integrate the rights of older persons in disasters into international law and international legal instruments.

Proposed UN Convention on the Rights of Older Persons

Since the first two international human rights covenants—ICCPR and ISECR—were opened for signature in 1966, the UN human rights treaty framework has consistently expanded to encompass the specific rights of various groups in society.[1] The adoption of

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a binding convention on the rights of older persons would be a logical continuation of this expansion process.

The rights of older persons were first recognized in 1991 with the adoption of the UN Principles for Older Persons. This was supplemented by the Madrid International Plan of Action on Ageing, adopted at the Second World Assembly on Ageing in April 2002. Built into the Plan of Action is a review and appraisal process which takes place every five years, involving a participatory "bottom-up" element involving civil society and older persons themselves. As noted by the UN, the process is designed to assist Member States in receiving feedback on the policies and programs they have implemented (UNDESA, 2018). More recent developments include the establishment of the Open-ended Working Group on Ageing (OEWG) in 2010 via UNGA Resolution 65/182, and the appointment of an Independent Expert on the enjoyment of all human rights by older persons via UNHRC Resolution 24/20 (2013).

The rationale behind this increasing focus on the rights of older persons stems from the recognition that older persons may face specific and serious violations of their rights. Older persons may be subjected to physical and mental abuse, either within a family or medical/institutional setting, and may be at risk of financial abuse and exploitation; as well as facing violations of their rights to privacy, family life and other core human rights due to the ageing process and their increasing reliance on others. Conversely, older persons are widely respected and often play a central role within families and societies due to their experience, wisdom and potentially more financially established situation. Balancing the capacities and potential multidimensional vulnerabilities of older persons has been a central theme of recent international discussions. For example, the need to ensure that the voices of older persons were included in the development of international rights frameworks led to the creation of dedicated civil society groups such as the Global Alliance for the Rights of Older Persons and has prompted advocacy by established organizations such as HelpAge International.

In December 2012, the UN General Assembly mandated the OEWG on Ageing to "consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons" (Res. 67/139). This opened a pathway for the creation of a new international human rights convention to join the existing nine core human rights treaties. At the same time, over the past decade, regional organizations have taken the lead in advancing the international law of older persons. In 2015 the Organization of American States (OAS) adopted the *Inter-American Convention on Protecting the Human Rights of Older Persons*, which was quickly followed by the African Union's *Protocol to*

the African Charter on Human and People's Rights on the Rights of Older Persons in Africa.[2]

Now, after 14 years of discussions between states, advocacy groups and older persons, the OEWG submitted its final report to the UNGA in May 2024, which recommended that Member States consider 11 non-exclusive options to address possible gaps in the protection of the human rights of older persons—the first of which was to adopt an "international legally binding instrument to promote, protect and ensure the recognition and the realization, on an equal basis, of all human rights of older persons" (A/RES/78/324). On 14 August 2024, the UNGA determined that the OEWG had completed its work and urged relevant UN bodies to consider its recommendations, and requested the UNGA President to hold a high-level meeting during its seventy-ninth session (2024-25) to "exchange views and share experiences on the recommendations …, and to define next steps on the challenges and opportunities regarding the rights and well-being of older persons" (A/AC.278/2024/2). As noted by the NGO Committee on Ageing, although there has not yet been a decision to commence drafting a convention, their members will be advocating for the Human Rights Council to urgently consider the options set out by the OEWG, particularly the option of an international legally binding instrument.

Considering these on-going discussions regarding the rights of older persons, it is opportune to reflect on the impact of disasters on older persons, and their role in supporting families and communities to prepare, respond and recover from disasters.

Human Rights and Disasters

Article 5 of the International Law Commission's *Draft Articles on the Protection of Persons in the event of Disasters* (2016) expressly states that "Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law." The applicability of existing human rights in the context of disasters is uncontroversial, although their implementation in practice can be challenging. Moreover, while the specific needs of different groups, such as "women, children, the elderly, persons with disabilities, and vulnerable or disadvantaged persons and groups" were acknowledged in the commentaries to the Draft Articles, there was little discussion of the unique needs or rights of older persons in disaster contexts.[3] This is surprising considering that the impact of disasters on older persons is otherwise well-recognized.[4] The National Center for PTSD in the US Department of Veterans Affairs highlights that while older persons may have developed coping abilities over their lifetimes, health

decline and other factors may make them more vulnerable in disaster contexts. Likewise, the US Government's National Institute on Aging warns that, "Being prepared [for disasters] in advance can literally mean the difference between survival and death, particularly for those who may have special medical or mobility needs." From an international perspective, HelpAge International has published *Guidelines for Best Practice on Older People in Disasters and Humanitarian Crises* to promote the rights and needs of older people in crises.

There are a range of international legal provisions which could provide inspiration for binding instruments addressing disasters and older persons. For example, the non-binding UN *Guiding Principles on Internal Displacement*, which expressly cover displacement arising from "natural and human-made disasters", confirm that elderly persons "shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs." Similarly, Article 22 of the *Convention on the Rights of the Child* requires states to take appropriate measures to ensure that refugee children receive appropriate protection and humanitarian assistance.

From the perspective of the proposed Convention on the Rights of Older Persons, clauses within existing international and regional human rights instruments are particularly instructive. Article 11 of the *Convention on the Rights of Persons with Disabilities* provides that, "States Parties shall 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."[5] Even more relevant is Article 29 in the OAS *Convention on Protecting the Human Rights of Older Persons*, which addresses situations of risk and humanitarian emergencies and requires state parties to adopt all necessary measures to ensure the safety and rights of older persons, including adopting assistance measures specific to the needs of older persons and to foster their participation in civil protection protocols. Article 14 of the AU *Protocol on the Rights of Older Persons in Africa* requires state parties to ensure that in situations of risk, including "natural calamities," older persons "shall be among those to enjoy access, on a priority basis, to assistance during rescue efforts, resettlement, repatriation and other interventions; … and ensure that Older Persons receive humane treatment, protection and respect at all times...."

Although the 1991 UN Principles for Older Persons do not include any references to disasters or other situations of risk, the 2002 Madrid Plan of Action contains a series of objectives and actions for states relating to "emergency situations." Yet, as highlighted in the fourth appraisal of the Plan of Action in November 2022, while emergency situations

invariably result in or exacerbate human rights concerns, there are glaring gaps in local disaster assessment and planning, which rarely target older persons (E/CN.5/2023/6). This conclusion was reflected in a recent report from the Independent Expert on older persons, which expressly noted that the UN Principles for Older Persons should be applied to policies and practices for disaster preparedness, response and recovery, and strongly argued that states should "adopt an international legally binding instrument on the human rights of older persons that would fill protection gaps in the context of climate-induced disasters." (A/78/226).

Conclusions

Governments are currently deliberating whether to advance the ILC Draft Articles on the Protection of Persons in the event of Disasters to a diplomatic conference for the adoption of an international convention on disasters.[6] Likewise, the conclusion of the OEWG on Ageing's work and call for a high-level meeting presents an important opportunity to fully consider the human rights implications of disasters for older persons. The regional instruments from the OAS and AU provide clear examples of how to include the rights of older persons in situations of risk in a human rights instrument. It would therefore be appropriate to include more express references to the impact of disasters for older persons in the ILC Draft Articles, while the inclusion of a specific clause on disasters and other situations of risk in the proposed convention on the rights older persons could help provide clarity on the obligations of states to ensure the protection of some of the most valued, yet vulnerable, members of our society.

About the Author:

Dr. Dug Cubie is a senior lecturer in the School of Law, University College Cork, Ireland. He is one of the founding editors of the *Yearbook of International Disaster Law*, is a member of the ASIL Disaster Law Interest Group, and is a PI in the UCC Disaster Research Cluster.

[1] The fundamental equality of all people and need to challenge any doctrine of superiority based on racial differentiation was prioritized in the 1960s in the face of apartheid and other serious forms of racial discrimination (ICERD, 1965). Likewise, in the 1970s the discrimination faced by women and girls and the need to protect their specific rights were codified (CEDAW, 1979). The 1980s saw the adoption of the Convention on the Rights of the Child (CRC, 1989), which was closely followed by protections for migrant workers (ICRWM, 1990); while the rights of persons with disabilities were codified in the 2000s (CRPD, 2006). Such a group-based approach to human rights protection is not without its critics, as noted by Frédéric Mégret, *The Human Rights of Older Persons: A Growing Challenge*, 11 HUM. RIGHTS LAW REV. 37-66 (2011).

[2] *See* Danwood M. Chirwa & Chipo I. Rushwaya, *Guarding the Guardians: A Critical Appraisal of the Protocol to the African Charter on the Rights of Older Persons in Africa*, 19 HUM. RIGHTS LAW REV. 53-82 (2019).

[3] *See* Susan Breau, *Lessons From COVID-19 with Respect to the Positive Obligations of States to Protect Older Persons in the Event of Disasters*, 5 Y.B. INT'L DISASTER L. 32-57 (2022); Natalie Baird, *Disasters, Human Rights and Vulnerability: Reflections from the Experiences of Older Persons in Post-Quake Canterbury*, 2 Y.B. INT'L DISASTER L. 314-340 (2019).

[4] For example: Ehren B. Ngo, *When Disasters and Age Collide: Reviewing Vulnerability of the Elderly* 2 NAT. HAZARDS REV. 80-89 (May 2001).

[5] Note that the UN Office for Disaster Risk Reduction (UNDRR) recommends avoiding the phrase "natural" disasters. *See* www.undrr.org/our-impact/campaigns/no-natural-disasters. *See also* www.nonaturaldisasters.com/

[6] *See* UNGA, Seventy-eighth session Sixth Committee Agenda item 86 Protection of persons in the event of disasters, *Oral report of the Chair of the Working Group Chair: H.E. Amb. Antonio Lagdameo (Philippines)* (Nov. 8, 2023).