

Are the Rights of Elderly People Well-protected? Revisiting the Existing Global and Regional Human Rights Frameworks

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Abstract

Across the globe, large numbers of elderly people (60 years and above) face challenges and hurdles such as discrimination as well as abuse and neglect, which severely restrict the exercise of their rights. In this aspect, the discussion regarding the human rights of elderly people is critical. At the national level, many countries, be it developed or developing, try to address the issues of elderly people through their domestic legal mechanisms. However, when it comes to the international context, literature suggests that the world is not sufficiently responsive to the violation of rights of the elderly as for these people; there is hardly any international human rights mechanism which is legally binding. Although concerns involving the elderly people are not recent, their rights have often been neglected by the international community. It is worth mentioning that human rights of other disadvantaged people e.g., children, women, and persons with infirmities are often protected and ensured through several conventions, treaties, and declarations. However, the elderly people are, perhaps, the last global group without having any particular treaty or legally binding document for ensuring their rights. Some piecemeal approaches are observed in several human rights frameworks that refer to the rights of elderly people, which are reactive in nature. Compared to the global mechanisms of human rights, the regional mechanisms are considered better to address the human rights of elderly people, even though sometimes without any enforcement mechanism. Keeping this in mind, based on secondary sources and analysis of existing literature, this article aims to explore the rights of the elderly available under different human rights instruments. It will also assess the sufficiency of these provisions in protecting the human rights of elderly people. It is observed that there is a scarcity of specific global human rights mechanism to address the rights of elderly people. In case of a regional system, it is found that only Inter-American system has an instrument over the rights of elderly people. As such, the paper will then recommend the adoption of a comprehensive human rights instrument both in the universal level as well as the regional level especially European and African system, particularly for elderly people, which can make a substantial impact in ensuring and guaranteeing their rights.

Keywords: Human rights of elderly, international instruments, regional efforts, vulnerable groups

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Introduction

Since 1982, the world has initiated the discussion on issues relating to ageing as it is expected that by 2050, there will be more than two billion people (The United Nations, Department of Economic and Social Affairs, Population Division, 2019) in the world who would be categorized as elderly³ people (Jamaluddin et al. 2017; Jamaluddin, Chuan & Taher, 2015). Domestically, the issues relating to elderly people are considered by several states but, frequently in a lackadaisical approach (Megret, 2011). The countries, be it developed or developing, try to tackle the issues concerning the elderly people in their respective ways (Pinzon and Martin, 2003). However, internationally, the human rights of elderly people have been ignored for a long period of time (Fredvang & Biggs, 2012). The debate and discussion on elderly people's rights is relatively, a beginning (Doron & Apter, 2010). For instance, it was the year 2009 when the United Nations Human Rights Council made recommendations for conducting research on the requirement of protecting the rights of the elderly people in the aspect of human rights context (Hert & Mantovani, 2011). However, it would be wrong to say that the elderly people were completely out of focus, rather, "the issue was very often typically framed through registers, analytical or normative, other than that of human rights: medical, welfare, philosophical, political, economic, etc." (Megret, 2011).

Globally, numerous instruments relating to human rights are in place that highlight specific rights of all persons including the elderly people. For instance, the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic Social and Cultural Rights (ICESCR). Besides, some regional human rights mechanisms are available which can be applicable to elderly people. Pinjon and Martin (2003) found in their study that,

the treaty making bodies in charge of monitoring compliance with the obligations established therein have also developed protections that have expanded the scope of the respective treaties to protect persons in situations unimagined at the time of the original signing of these documents.

Moreover, some international treaties⁴ are existent addressing the needs of special category of peoples (Cox & Pardasani, 2017). Yet, the elderly people remain a vulnerable section without having any legal mechanism for protecting their rights (Tah & Mokhtar, 2017).⁵ Certainly, some international documents

³ In accordance with the World Assembly on Aging, 1982, 'elderly' is defined as such people who are 60 years and above.

⁴ For example, the Convention on the Rights of the Child, 1989; International Convention on the Elimination of all forms of Racial Discrimination, 1966; and the Convention of the Elimination of All Forms of Discrimination against Women, 1979.

⁵ The only convention that deals with the rights of the elders is the 'Hague Convention on the International Protection of Adults, 2000.' This convention promotes and protects the

mention the rights of elders, but, a single and comprehensive instrument particularly dealing with the needs of elderly people is absent in the international arena (Chitov, 2018; Mitchell, 2017).

Across the globe, the age discrimination and ageism exist, and the elders go through experiences of discrimination as well as the infringement of rights at various levels. Even with the fact that universal human rights instruments apply to people of all ages, explicit reference to elderly people is scarce. Consequently, the rights of elderly people are not being secured adequately by human rights monitoring as well as protection mechanisms. In this context, the African Human Rights Commission⁶ comments that “it is remarkable that no specific UN Convention exists to proclaim and regulate the rights of elderly people” (Sik, 2008). Indeed, the absence of focus on human rights of elderly people has become more obvious in recent years since the rights of other group of people have been addressed through various human rights instruments (Megret, 2011).⁷

However, unlike the international instruments, some regional mechanisms contain provisions pertaining to the elder’s rights (Pinjon & Martin, 2003).⁸ Each system, be it international or regional, has its own distinctive treaties on human rights and supervisory systems. As such, this article is an attempt to examine these mechanisms and underline the existing status of the rights of the elderly people within these various frameworks. The arrangement of this paper will reveal the present structure of international human rights instruments for elderly people. The different regional systems of human rights will then be discussed in this paper. It will then briefly highlight that none of the mechanism is adequate to offer the protection of elderly people’s rights. The paper will wrap up with recommendations for the enactment of a comprehensive human rights instrument in international level as well as regional especially European and African systems particularly for addressing the rights of elderly people.

Existing instruments on International human rights

Across the world, numerous documents are available where the rights of elderly people have been referred to. Yet, a single comprehensive mechanism is non-existent that systematically addresses the specific rights for the elderly people (Miller, 2010; Peisah et al., 2020; Huenchuan & Pinero, 2011). Certainly, it will be wrong to state that international human rights documents do not cover the elderly people. A number of documents which recognize particular rights of everyone, thereby, categorically apply to the elderly people. In this part, those instruments will be analysed which start from the attempts of the United Nations.

elderly from legal disputes care and custody. Nonetheless, it does not cover the social security and health related issues which ultimately benefit the elderly people.

⁶ Popularly known as the ‘African Commission on Human and People’s Rights.’

⁷ For example, the ‘Child Rights Convention (CRC) 1989’ for children and the ‘Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979’ for women.

⁸ The European, the Inter-American Human, and the African Human Rights System contain provisions on the rights of the elderly people in their human rights mechanisms.

The United Nations Attempts

The United Nations' attempts on elderly people could be first observed in the Universal Declaration of Human Rights (UDHR), 1948. Article 25(1) of the UDHR clearly mentions the rights of elderly people. The Article provides that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

To referring the above-mentioned article, it can be said that the elderly people can enjoy the rights preserved in the UDHR. Even though the Declaration does not have a binding effect, it has become the customary international law. It also provides the basis as well as moral force for succeeding human rights mechanisms (Help Age International, 2012). Highlighting the supremacy of UDHR, the International Court of Justice asserted that the states parties cannot eschew the provisions of UDHR on the ground of their national legislations.⁹ For recognising the needs of elderly people in a more holistic way, the United Nations General Assembly convened the first World Assembly on Ageing in 1982. Following the recommendations of the Assembly, the International Plan of Action on Ageing (the Plan) was adopted (Jamaluddin et al., 2019). It is worth mentioning that the Plan emphasised on the means to protect and assist the elderly people and was subsequently employed “through the five principles of independence, participation, care, self-fulfilment, and dignity by the United Nations Principles for Older Persons” (Miller, 2010). The United Nations Principles for Older Persons was approved in 1991 which enumerates 18 entitlements for the elderly people (Jamaluddin et al., 2019). More specifically, human rights of this category of people have been mentioned in the Preamble and again in the provision related to care (Megret, 2011). Subsequently, the Proclamation on Ageing was adopted in 1992. However, the Proclamation was not successful to mark any orientation towards the rights of elderly people (Megret, 2011).

The Second Assembly on Ageing was convened in 2002 and the Madrid International Plan of Action on Ageing (the Plan) was approved by and in this assembly. This plan calls for “the promotion and protection of all human rights and fundamental freedoms,” and indicates the necessity to include elderly people into the universal agenda (United Nations, 2002). It reiterates that protection of human rights is particularly important for achieving a society for the people of all ages (United Nations, 2002). According to the International Plan of Action, it is the responsibility of the national governments to make this plan into action. The

⁹ See, South West Africa Case, (1966) ICJ; Dissenting opinion of Judge Tanaka, available at <https://www.icj-cij.org/public/files/case-related/47/047-19660718-JUD-01-06-EN.pdf>, accessed on 9 January 2021.

national governments will make this plan into reality through developing and executing policies for ensuring social and economic protection for elderly people (Miller, 2010). On the whole, it can be said that the aim of this plan is to eradicate neglect as well as abuse and violence towards elderly people (Miller, 2010). This plan identifies and sets some other prominent goals too.¹⁰ However, the prime focus of this Plan is on “goals, and therefore policy, than rights and a sense of obligation” (Megret, 2011).

The International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was embraced in 1966 which came into force in 1976. In the preamble, it states that the rights it bears are derived “from the inherent dignity of the human person.”¹¹ In addition, Article 2 mentions that:

The States Parties to the present Covenant undertake to guarantee that the rights enumerated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

From this provision, it is clear that age is not expressly mentioned as a category to secure from discrimination.¹² Though, in accordance with the statement of the Committee on Economic, Social, and Cultural Rights (CESCR) “discrimination on the grounds of other status could be interpreted as applying to age.”¹³ Again, Article 12 mentions that, “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Despite the fact that the elderly people are not particularly referred to in the ICESCR, they are human beings and, as such, deserve basic human dignity (Miller, 2010). As a consequence, the elderly people should be entitled “to the highest attainable standard of physical and mental health” (Miller, 2010). The committee on ICESCR adopted General Comment No. 6 with a view to make it clear the scope

¹⁰ For example, according to article 12 (a), “[t]he full realization of all human rights and fundamental freedoms of all older persons” and according to article 12 (e), “[e]nsuring the full enjoyment of economic, social and cultural rights, and civil and political rights of persons and the elimination of all forms of violence and discrimination against older persons.”

¹¹ Preamble of the ICESCR, 1976.

¹² In addition, the world elderly or older person is not mentioned in the text of the Covenant.

¹³ CESCR General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons.

to which the Covenant applies to the elderly people.¹⁴ Thus, “General Comment No. 6 is the CESCR’s interpretation of the provisions of the Covenant in relation to the elderly” (Hert & Mantovani, 2011).

Apart from adopting General Comment 6, the duty to monitor the implementation of the rights of elderly people has been taken by the CESCR. Thus, it can be said that the first United Nations mechanism focusing on elderly people is the CESCR. Even though the ICESCR is an executable document, the elderly people whose rights are violated may be unable to voice those infringements, and abuse, therefore remains unreported (Miller, 2010).

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR), apparently, does not seem to provide a specific safeguard to the elderly people. Nonetheless, its provisions can be applied for fulfilling that objective. In order to defend the rights of elderly people, the Human Rights Committee accept the ICCPR (Miller, 2010).¹⁵ For instance, Article 26 states the right to equal protection of law and, as such, it can be applied to the right to social protection to the elderly people. In *Brooks v. Netherlands*¹⁶ the precedent of application of Article 26 for obtaining social protection was established.

In addition, Article 6 states that “[e]very human being has an inherent right to life.” Miller (2010) finds in his study that if the states parties are unable to form workable guidelines that cause satisfactory old-age nursing home, the “residents could end up arbitrarily deprived of their lives.” Article 7 of the Covenant states that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without free consent to medical or scientific experimentation.” As such, regarding abuse of psychiatric drugs and treatments, Article 7 can be resorted to make a claim as it could form a non-consensual utilisation of medical or scientific experimentation. Yet, existing literature suggests that such provision is restricted mainly to the application of Article 26 regarding the case of social protection (Miller, 2010).

¹⁴ General Comment No. 6 has been adopted by CESCR on ‘The Economic, Social and Cultural Rights of Older Persons’ in its 13th session held in 8 December 1995, available at <https://www.refworld.org/pdfid/4538838f11.pdf>, accessed on 17 January 2021.

¹⁵ Ibid.

¹⁶ Communication No. 172/1984: Netherlands. 09/04/87. CCPR/C/29/D/172/1984, UN Human Rights Committee, Twenty-ninth Session. In this case, Mrs Brooks’ social security benefits were denied by the government as she was not within the permitted category of recipients. The Human Rights Committees, thus, observed that the legislation is enacted to give social protection benefits, “such legislation must comply with Article 26 of the Covenant.” The Committee also highlighted that, regarding the interpretation of any municipal law, Article 26 prohibits discrimination. Full case is available at <http://www1.umn.edu/humanrts/undocs/session42/172-1984.htm>, accessed on 1 May 2019.

Regional Efforts

Unlike the global mechanisms of human rights, the elderly people's rights are mentioned in various provisions of several regional human rights documents. It has been observed that in the European system along with the Inter-American system, the provisions on elderly people's rights are included in the treaties on ESC rights. However, in the African System of Human Rights, the ESC rights alongside with the civil and political rights are embodied in a single document (Pinjon & Martin, 2003). The next paragraphs, therefore, examine different regional human rights mechanisms which guarantee rights of the elderly people.

The European System

The European Human Rights System indicates the treaties adopted within the surroundings of the Council of Europe. These treaties are, *inter alia*, the European Convention on Human Rights¹⁷ as well as the Revised Social Charter.¹⁸ The Additional Protocol of 1988 enunciates safeguard measures pertaining to the elder's rights.¹⁹ This part covers the discussion on the pertinent points of the Charter of Fundamental Rights of the European Union, 2000.

In accordance with the Revised Charter, the elderly people will enjoy the right of social protection. The States parties shall pursue by all proper manners to ensure social protection for the elderly people. Pinjon and Martin (2003) find in their study that the Committee on Experts states that the primary objective of the provision relating to social protection is to:

Enable elderly persons to play an active part and have some influence in society, to guarantee them sufficient resources to live independently, to provide housing and an environment suited to their needs, and to guarantee adequate health care and social services.

Further, the Committee mentions that the States are needed to offer sufficient resources to qualify elderly people to survive a respectable life in addition to perform an active role in all aspects of life. Such concerns were raised by the Committee during their evaluation of state reports. As a whole, the Committee concerns the "standard of living enabling the elderly to remain full members of society" by considering on a State party's financial resources (Pinjon & Martin, 2003). Generally, financial resources indicate old-age pensions as well as other types of financial benefits that the States offer to their elderly people. It is not the requirement of the Revised Charter that the states have to follow a specific pension scheme, instead, "grants them a certain margin of discretion to

¹⁷ The Convention was adopted by the Council of Europe in 1950. It came into effect in 1953. This instrument, however, does not explicitly address the rights of elderly people.

¹⁸ The European Social Charter was adopted and came into effect on 26 February 1965. However, the Charter was revised in 1996 and the revised Charter came into force in 1999.

¹⁹ See, Article 4 of the Additional Protocol of the European Social Charter.

implement their own social security system” (Pinjon & Martin, 2003). However, the scheme adopted by the States following the obligations towards the Revised Charter is determined by the Committee. The Committee supervises the criteria needed to be eligible for an old-age pension scheme.²⁰ Besides, the Committee examines whether the national pension schemes spoil the rights of elders to lead a standard life and to actively take part in the various activities of the society. In addition, the Committee also observes the expenses of care home and medical care as a part of living standard of elderly people (Pinjon & Martin, 2003).

According to Article 23 of the Charter, elderly have access to a pension which in turn enables them to take part in the activities of the community as full members. It is required to mention here that Article 13 of the Revised Charter mentions the protection that the States parties must give to those in need e.g., elderly people who are entitled to a pension (Pinjon & Martin, 2003). Additionally, Article 13 refers to the medical as well as the social assistance. The Human Rights Committee also underscored that states “must strive to ensure that all persons who are entitled to social assistance are aware of their entitlements and are not hindered in obtaining their benefit” (Pinjon & Martin, 2003). However, according to the statement of the Committee, in order to avail protection under Article 13, ‘need’ has to be the only criterion for social assistance. As such, for obtaining medical assistance ‘illnesses’ must be the only criterion. Moreover, Article 13 confirms that these rights are for people who are without ‘adequate resources’ (Pinjon & Martin, 2003).

In case of identifying the scope of Article 23, two issues are required to consider. First, speedy implementation is a key characteristic of such right. It is distinct compared to other ESC rights especially those rights are secured through the ICESCR. Given that there is no provision in the Revised Charter regarding progressive realisation of rights ensured therein, the states parties have to abide by the obligations arising out of ratification of the Charter (Pinjon & Martin, 2003). Another issue needed to consider is that, upon ratification, the states parties are not required to admit every obligation contained by the Charter. According to Part III of the Charter, the states parties ought to accept minimum six rights from the nine rights, listed in Part II of the Revised Charter (Pinjon & Martin, 2003). However, the right of social protection to the elderly people is not inserted among those rights.

In addition to the Revised Social Charter, the European Union adopted the Charter of Fundamental Rights in 2000.²¹ This Charter contains a long list of human rights. Article 25 of the Charter categorically emphasizes on the rights as well as the needs of the elderly people.²² It is thus considered a significant step has been undertaken by the European Union to protect their elderly people’s

²⁰ For instance, minimum age, nationality, residence etc.

²¹ The European Union, ‘Charter of Fundamental Rights of the European Union’, 2012.

²² Article 25 of the Charter states that “the Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in both the social and cultural life.”

rights. However, the Explanatory Report states that the rights enumerated in the Article 25 have to be construed in light of the Article 23 of the Revised European Social Charter. As such, the legal status of the Charter of Fundamental Rights is not clear. Therefore, Pinzon & Martin (2003) mention that “the impact that Article 25 might have in furthering the rights of the elderly in Europe remains uncertain.”

The Inter-American System

The Inter-American system is a regional human rights mechanism works for protecting and monitoring the human rights of the countries that are members of the Organization of American States (OAS). The key documents of the Inter-American system are the ‘American Declaration on the Rights and Duties of Man’²³ as well as the ‘American Convention on Human Rights.’²⁴ However, both the instruments have failed to contain any reference to elderly people’s rights. In 1988, the Additional Protocol to the American Convention on Human Rights was adopted. The draft Protocol considered the comments made by the governments²⁵ as well as the relevant international organizations²⁶ about the elderly people. The Protocol mainly covers the ESC rights. Article 17 of the Protocol mentions that everybody will have the right to special security during their old age. Under the Protocol, the ratifying States are agreed to adopt required measures progressively to turn this right into a reality (Huenchuan & Pinero, 2011).

However, after the careful reading of Article 17, it is observed that some important points have been raised through this article. Firstly, it explicitly tries to establish that the people of old age are a vulnerable section and they deserve special protection. As a result, the ratifying States have to adopt special initiatives for realising their rights. Secondly, this right is progressive in nature (Pinjon & Martin, 2003). The progressive nature indicates that although the States have to adopt steps to enforce this right, it is not instantaneously executable after ratification. Finally, the right is restricted by the term ‘particularly,’ signifying that right enshrined therein is not comprehensive. The states parties have to endeavour to realise protection, but remain free to provide additional protections despite of having their available resources (Pinjon & Martin, 2003).

Apart from the Protocol, the Inter-American Human Rights Commission expresses their concern over the violation of the rights of the citizens including the rights of elders. For instance, on its’ 2001 special country report, the Commission criticized the Government of Paraguay for not handling the social security problems in a successful way because the Commission found that a good

²³ The Declaration was adopted in 1948 at the 9th International Conference of American States.

²⁴ The Convention was adopted in 1969. It came into effect in 1978.

²⁵ For example, the Government of Peru reaffirmed the necessity of expanding the protection to the special group of people such as elders.

²⁶ The Pan American Health Organization states that the elderly people deserves special attention.

number of elderly people were out of social protection schemes.²⁷ Even, the Commission expressed its dissatisfaction over the Government of Colombia for its incapability to protect the right to life of their citizens including the rights of the elderly people.²⁸

Needless to say, under the Inter-American system, the most remarkable document is the ‘Inter-American Convention on Protecting the Human Rights of Older Persons.’²⁹ It seems a wonderful assurance from the OAS to progress the long-awaited hopes of the elderly people of this region (Howgate, 2015). This Convention contains a number of rights *inter alia* physical, economic, and social security. It is worth mentioning that the Convention necessitates equality as well as non-discrimination, whereas at the same time encourages the principle of gender equity.³⁰ It also lists several general duties of the states parties in Article 4.³¹ By adopting such an instrument, the Inter-American system is now one step ahead compared to the European Human Rights System.

The African System

The Organization of African Unity (now the African Union) adopted the ‘African Charter on Human and Peoples’ Rights (African Charter)’ on 27 June 1981. This Charter contains the civil and political rights. The unique feature of this Charter is that it also contains the ESC rights in the same instrument. The Charter highlights the protection of rights of every African citizen regardless of age. However, the Optional Protocol to the Charter specifically protects the rights of older women (HelpAge International, 2008). The Preamble of the Charter provides that:

Civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

This provision is not just for making the connection between both types of rights. Rather, it signifies that if the ESC rights are implemented properly, both the civil and political rights will be evolved (Pinjon & Martin, 2003). This is, however, distinct compared to the other regional human rights mechanisms discussed thus far (Pinjon & Martin, 2003). Article 2 of the African Charter states that:

²⁷ Third Report on the Situation of Human Rights in Paraguay, 9 March 2001.

²⁸ The special report on the human rights of Colombia, 1993.

²⁹ This Convention was adopted in 2015 and came into force in 2017.

³⁰ The Convention contains a list of 15 General Principles in Article 3.

³¹ Under this Convention, the states parties are duty bound to undertake measures to prevent, punish, and remove any practices contrary to the Convention.

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Nonetheless, there is no provision for prohibiting against age discrimination in the Charter (Pinjon & Martin, 2003). In this regard, African position is similar to the European and Inter-American systems in addition to universal mechanism of human rights.

Article 18 of the African Charter mentions the protection of the elderly people along with the protection of women and the family.³² However, the area of application of this Article is unclear because only in a few cases, the African Commission on Human Rights has referred to the rights of elders. Yet, it is noteworthy that Article 18(4) admits the elderly people are a vulnerable group of people. Being a vulnerable group, they deserve special protection. Besides, the ratifying States to the African Charter have an obligation to enforce the rights ensured therein instantly upon ratification (Odinkalu, 2001). Article 1 of the Charter provides that “the Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.” This provision indicates that the rights enumerated in the Charter are enforceable straightaway, and it has been mentioned by the African Commission. In addition, the rights are protected and duties are prescribed by the Charter at the same time (Pinjon & Martin, 2003). From this aspect, it can be said that the duties corresponding with the rights are protected by this Charter.

For a clear understanding, it is equally significant to highlight what is absent, meaning not embraced by the African Charter. Thus, it is observed that the Charter does not expressly guarantee the “right to social security” and/or “a right to an adequate standard of living” (Odinkalu, 2001). Moreover, there is no expressing assurance of the right of housing and food. The Charter is also silent regarding the right to “protection from forced labour” (Odinkalu, 2001).

³² Article 18 states:

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

However, one scholar mentions in his study that the Commission has the scope to construe many of the articles³³ of the Charter to form an extensive net of security for the people, especially for the elderly people of Africa (Odinkalu, 2001). As such, in a Communication of 2002 the African Commission has proclaimed that the Articles 14, 16, and 18 implicitly guarantee the right to housing and/or shelter for the elderly people.³⁴

Like the situation prevailing in the European System, elderly people's rights under the African System are also not certain. Needless to say, the African Commission has sufficient authority to address the civil as well as the political rights. In tandem with, it has the authority to address the ESC rights of the people too. In spite of having such power, "the scope of elderly people's rights will depend on the will of that body to interpret all the provisions of the African Charter and to work toward their enforcement" (Pinjon & Martin, 2003). Besides, without adopting the specific measures by the African Commission with a view to guaranteeing autonomy, dignity, and equality, the elderly people will be ceased to enjoy their human rights (Kihumba, 2018).

Elderly People and the Other International Instruments

It goes without saying that no particular provision is existed relating to the rights of elders in the core international human rights documents (Megret, 2011). However, some piecemeal approaches are observed in some other international treaties relating to human rights. For instance, the 'Convention on the Rights of Persons with Disabilities 2006' mentions the rights of elderly people.³⁵ Under this Convention, the states parties are obligated to provide appropriate accommodation³⁶, assistance as well as support for the elderly people.³⁷ The Convention also provides additional protections to the elderly people such as their right of non-discrimination in case of adopting decisions pertaining to taking care of themselves (Kanter, 2009). Besides, Article 8 (1) (b) of the convention mentions regarding the combating stereotypes, based on age, in every aspect of life. Thus, it seems that out of the key human rights documents, the CRPD offers the most suitable safeguard of elderly people's rights (Ramachandran, 2014). Another relevant instrument in this regard is the 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.'³⁸ Article 1 of this convention explicitly

³³ For example, article 5, 16 and 17 of the African Charter on Human and People's Rights.

³⁴ Though these articles mainly discuss about the right to mental health and family protection.

³⁵ The Convention on the Rights of the Persons with Disabilities was adopted in 2006. It has come into effect on 3 May 2008.

³⁶ Article 13 of the Convention.

³⁷ Article 16 of the Convention.

³⁸ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted in 1990.

indicates 'age' as one of the grounds³⁹ on which discrimination is prohibited in the application of the convention. In addition, according to Article 7, these are the requirements of the state parties to respect and ensure the rights of migrant workers and their family members without discrimination based on, *inter alia*, 'age'.

The 'Convention on the Elimination of All Forms Discrimination against Women (CEDAW), 1979' is also relevant for the elderly people as it discusses the protection of older women by condemning discrimination (Judge, 2008). Besides, the Committee for the CEDAW is also concerned regarding the rights of older women. The general recommendation no. 27 has been adopted for the safeguard of rights of older women in 2010 (OHCHR, 2011). The recommendation highlights the various discriminations encountered by older women. For example, in the area of financial issues and micro-credit or restricted access to health care facilities, in which the situation of older women is worst due to their age (OHCHR, 2011).

Considering all the mechanisms, it is assumed that good progresses have been made internationally regarding the rights of elderly people. However, the former United Nations Secretary General mentions that still there are lack of references regarding the situation of rights of elderly people in the reports to human rights treaty bodies. It has been observed from the report on the 'Second World Assembly on Ageing' that among the reports of 124 states parties, merely three States provided reference to elderly people whereas only one mentioned the sufferings of elderly people in the care homes (United Nations General Assembly, 2009). Compared to ICCPR, ICESCR seemed somewhat better as out of 122 State reports, 24 made references regarding the rights of elderly people (United Nations General Assembly, 2009). Likewise, it could be observed in the reports received by the 'Committee on the Elimination of All Forms of Discrimination against Women', where 32 states report out of 190 highlighted the condition of older women in their reports (United Nations General Assembly, 2009). These reports, thus, reveal that "many States are 'age-blind' in their human rights reporting" (United Nations General Assembly, 2009). Therefore, according to Frederic Megret (2011), the international movement regarding the issues confronting the elderly people is still ambivalent to some extent about exhausting a rights framework. It is observed that prevailing rights references existed in various human rights instruments remain scattered. Such a situation gives an impression that the issue of the rights of elderly people is not considered widely or even as sincerely as it should be (Megret, 2011).

Conclusion

Because of their age, the elderly people encounter various human rights challenges in their daily lives. Consequently, their capability to enjoy the human rights along with the exercise of their right to life with dignity is hindered. Nonetheless, the issues face by the elderly people have remained mainly

³⁹ The other grounds are *inter alia* colour, political opinion, race, sex etc.

unaddressed or only nominally recognised. As such, they remain invisible within the very framework of human rights.

The discussion made above shows that a mechanism to have an all-encompassing policy instrument on elderly people's human rights is absent mainly at the global level. However, some provisions addressing the rights of elders are visible in the global human rights mechanisms. In addition to that, some isolated efforts are observed by several international forums as they refer elderly people's rights during interpretation of relevant treaty and/or convention. Besides, the international forums have tried to fill the vacuum by fewer declarations and some other isolated statements. Yet, any specific forum having authority to concentrate on elderly people's rights is still absent internationally. Moreover, no laws or specific treaties are seen in dealing with the rights of elderly people at the universal level. As such, the elderly people are, in fact, the only vulnerable group of population without having a complete and/or legally binding document highlighting their rights particularly. Hence, at international level, a separate human rights document should be adopted for addressing the rights of elderly people.⁴⁰ In regional level, it is observed that only the Inter-American system has adopted a convention for addressing the rights of elderly people. Even though elderly people's rights are addressed in distinct instruments in European system and African system, it would be better to adopt separate instruments for the rights of elderly people with effective enforcement mechanism.

The adoption of a new document with its enforcement procedure would be a significant step to reduce the redress and to ensure the well-being of elderly people.⁴¹ It is expected that the new mechanism will also have a major impact on national policy making as well as legal reform of the member states. Moreover, if an international human rights document is adopted specifically for the elderly people, it could go a long way to serve their interest.

⁴⁰ The new instrument should incorporate, *inter alia*, the right to health, social protection, adequate standard of living, age sensitive accommodation etc. for the elderly people.

⁴¹ Pointing to the importance of a separate human rights convention for the elderly people, the United Nations Secretary General stated in the report of the Second World Assembly on Aging in 2009 that:

A convention would clarify and consolidate existing international norms with respect to the rights of older persons, and it would encourage a more equitable allocation of needed resources for older persons. A convention would clarify the specific obligations of States in order to ensure the full enjoyment of recognized human rights of older persons. It would also empower older persons and provide the framework for national legislation. Moreover, it would provide older persons greater visibility and recognition nationally and internationally as well as the basis for advocacy, public awareness and education on the rights of older persons.

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