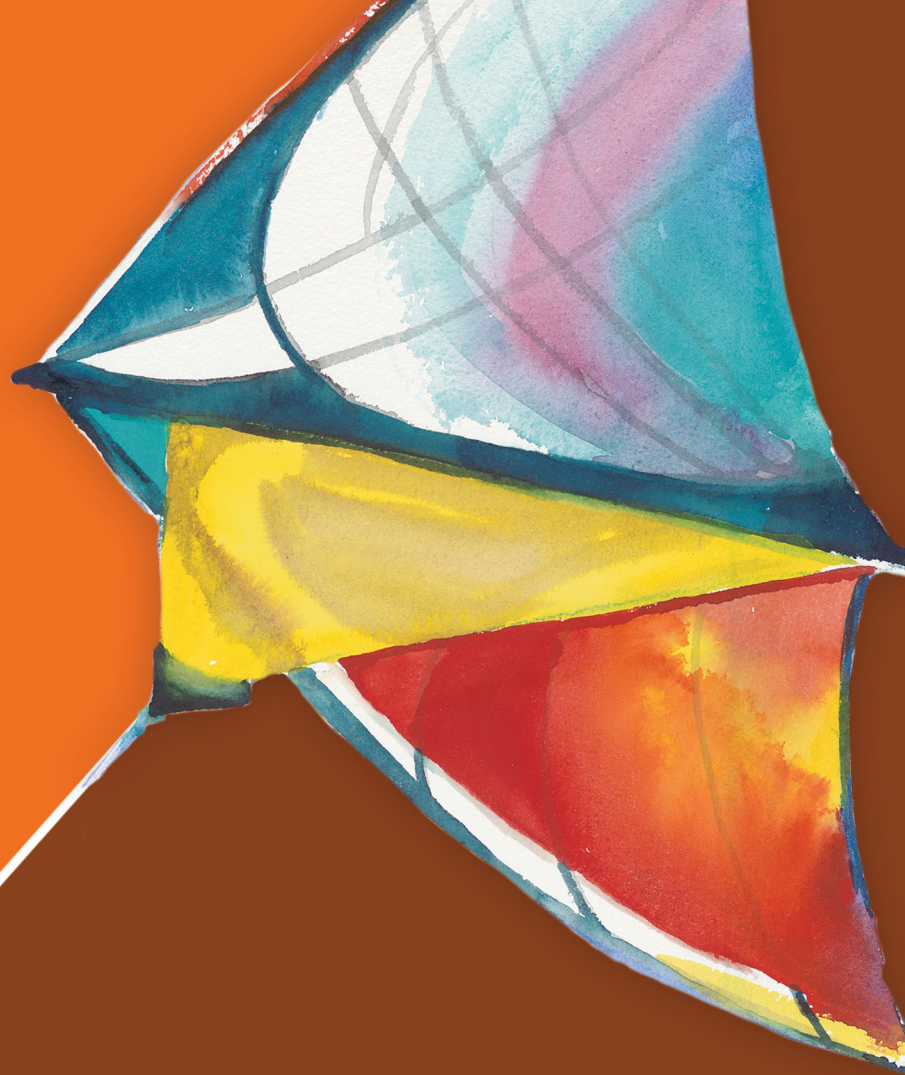


# **SERIES ON HUMAN RIGHTS AND HEALTH**



## **5. OLDER PERSONS**

**A Human Rights-based Approach**

**PAHO**



Pan American  
Health  
Organization



World Health  
Organization  
REGIONAL OFFICE FOR THE  
AMERICAS

## 5. OLDER PERSONS: A Human Rights-based Approach

*"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."*

Preamble to the Constitution of the World Health Organization

### NEGLECTING JULIA<sup>1</sup>

Confused and humiliated, Julia, a 76-year-old woman with no known relatives or close friends, was evicted from her apartment for not paying the rent because the pension she received was only enough to cover basic food and medical expenses. Julia was moved to a public long-term care facility, where she was neglected.

Although these facilities serve a population that is highly vulnerable because of their health, financial, emotional or functional condition, they generally lack processes to ensure their proper operation, as well as regulatory or control mechanisms to monitor the living conditions for the people admitted to these facilities. This was the case at the facility where Julia stayed for 15 long months. The institution was not properly regulated nor was it subject to periodic inspections of its operations, living conditions, or respect for the rights of older persons.

The institution's staff had never been trained in the area of human rights, particularly in the advocacy or protection of the rights of older persons. They were unaware of (and thus did not respect) the rights of the people they cared for and they had prejudices associated with disability and old age. Julia was given expired medications and inappropriate food, and did not have access to adequate bathroom facilities. The limited medical staff ignored her and tied her and other residents to chairs. This was supposedly a strategy to prevent falls and accidents, but in reality it was a form of "control."

These cases of abuse, many of them associated with the stigma that older people are incapable of taking care of themselves, put Julia in a situation of utter helplessness. She did not know her rights and did not have the ability to claim them. Forced to live in an unhealthy institution with poor safety and hygiene conditions, Julia became weak and sick. Psychologically, she felt alone and betrayed.

Julia spent more than a year of struggling to survive these conditions, until a social worker from the country's elder abuse program called on a non-governmental organization (NGO) to take on her case. The NGO's work involved the protection of Julia's human rights, particularly her rights to personal integrity, health, an adequate quality of life, housing and property, as well as the requirement that the State take appropriate measures to guarantee these rights. As a result of the NGO's intervention, Julia was able to go back to living independently with appropriate medical care and a support system that enabled her to live autonomously and free of violence.

<sup>1</sup> This story is based in part on an actual incident that occurred in Latin America, but has been adapted for this publication..

## Older persons and their situation

One of the most recent human rights treaties, the Inter-American Convention on Protecting the Human Rights of Older Persons, defines older persons as those aged 60 or older, except where national law has established a minimum age that is lesser or greater, provided that it is not over 65 years (7).

Worldwide, there are currently 900 million people aged 60 years and over, a number that will grow to 1.4 billion in 2030. According to United Nations estimates and projections, in 2017 there were 76.3 million older persons in Latin America and the Caribbean, which accounts for 12% of the regional population. By 2030 this population will rise to 121 million and the elderly will represent 17% of the region's total population. By 2060, older people will represent 30% of the regional population, numbering around 234 million (2).

One of the characteristics of demographic aging in the region is the feminization of old age: women live longer, have more chronic diseases and smaller pensions, and are often caregivers. Medical personnel and policymakers need to understand that aging affects women and men differently. This recognition is critical to ensure equality between older men and women and to properly address their different physical, mental and social needs. Another characteristic is the "aging of old age," which refers to the increase in people aged 75 and over who present conditions of fragility more frequently than other groups, a large part with chronic degenerative diseases that need care. Another unique feature of this population is the urbanization in old age: in 2015, 81% of older people were living in urban areas while 19% resided in rural areas (3).

Historically, older people have been viewed from a hegemonic perspective that considered this group of people as homogeneously incapable, imposing a single way of understanding their needs and interests, with a direct impact on their health care. This stigmatizing view of aging has subjected older people to abuse,

discrimination, and mistreatment, violating several basic human rights such as the right to life, personal integrity, dignity, privacy, and enjoyment of the highest attainable standard of health.

In addition, public policies affecting this group delayed and concealed the recognition of older people as being entitled to human rights, preventing any transformation of the historical discrimination and subordination they suffer. For this reason, health professionals and society are generally ill-prepared to distinguish between physical and psychological abuse and normal signs of aging, with the result that older persons are subject to gender and age discrimination, financial exploitation, dependency, and physical, psychological and social abuse.

Older persons' right to health includes services at all levels of health care, including prevention, rehabilitation, long-term care and palliative care. Caregiving is a new social reality that is currently invisible, but one that the governments must focus on. In general, it is women who act as caregivers, including long-term care for dependent older people. This often has a negative impact on their own physical health and economic and social status. An older person's care is often provided by another elderly individual who has their own needs. The forms of care may differ from one country to the next, but there are common situations such as insufficient coordination of social and health care, financing shortfalls, lack of family support, mistreatment, and abuse. When formulating public policies on health and social protection, special consideration must be given to this situation and its consequences to move forward with appropriate measures.

It is also essential to understand the implications of protecting older people's right to health in the context of the COVID-19 pandemic and its future consequences. Various international agencies have called on governments and society as a whole to provide special protection for vulnerable groups, including older persons,

especially those who live alone, in institutions, or in low-income communities, and who have unequal access to health care and are often under-employed and lack social protection. The spread of the virus made it difficult to treat the chronic diseases suffered by older people, which exacerbated their loss of their physical capacity and culminated in a worsening state of health and early death. There have also been cases of age discrimination where emergency care was prioritized for younger people infected with the virus, or where the vertical isolation system was abused, and older people were left isolated on different floors or areas of an institution for longer periods than would normally be indicated from a health standpoint (4). Another aspect that may go unnoticed is reinforced stigmatization of older people, i.e., that they are an economic burden. This negatively impacts the possibility of allocating resources for pandemic care. Also, restrictions to prevent contagion may violate their right to participate in community life, isolating them or increasing prejudices against them (5).

Finally, although economic, social, and legal conditions vary from country to country in the Americas, and despite the enormous regulatory progress that has been made in recent years to promote and protect the human rights of older people, there are still enormous challenges to preventing abandonment, mistreatment, and abuse of this population group. The protection and promotion of the health and socio-economic security of older persons is not only a public policy issue, but also a matter of promoting human rights. To prevent further abuse, recognition of the problem must be followed by action.

### **Protection under international and regional human rights instruments**

Both the United Nations and the Inter-American System of Human Rights have an important set of legal instruments that recognize and protect the rights and freedoms of all people. Because international human rights

instruments established by international law protect all persons without distinction of any kind, such as to ethnicity, color, sex, language, religion, political or other ideology, national or social origin, economic status, birth, or any other status, they are also considered to protect the rights and freedoms of older persons.

Conventions or treaties are legal instruments that are binding on the States that have ratified them. There are also other instruments, such as declarations, resolutions, and comments issued by the United Nations mechanisms and the Inter-American system, which establish international human rights standards. Human rights standards represent a consensus of international opinion. Most are issued by the United Nations General Assembly, the Human Rights Council, treaty monitoring mechanisms, other United Nations bodies, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), and specialized agencies of the United Nations and the Inter-American system. These standards serve as an essential guide for implementing human rights treaties domestically through the formulation and review of legislation, policies, plans, and programs for greater protection of the right to health and other related rights of older persons, and for restructuring health services to benefit these individuals.

### **The United Nations human rights system**

The United Nations human rights monitoring system consists of two types of bodies: those based on the United Nations Charter and those created under treaties (6). The Charter-based bodies are: the Human Rights Council (an intergovernmental body comprised of 47 members responsible for the promotion and protection of all human rights) (7), the Universal Periodic Review (a Member State-driven process for reviewing the human rights situation in all Member States, which gives each State the opportunity to declare what actions they have taken to address and improve the human rights situation in their countries) (8), and the



Special Procedures of the Human Rights Council, a mechanism whereby well-known human rights experts are given a mandate, either individually or as a working group, to address specific situations or thematic areas (9). An example of this mechanism is the mandate of the Independent Expert on the enjoyment of all human rights by older persons).<sup>2</sup>

The United Nations treaty-based bodies are committees of independent experts that monitor the implementation of international human rights treaties (10). Their existence stems from the actual treaties themselves; for example, the Committee on Economic, Social and Cultural Rights is a group of 18 independent experts that monitors implementation the covenant of the same name (11). These treaty bodies are mandated to receive and examine reports submitted periodically by the States Parties which describe how they are implementing the provisions of the treaty at the national level. They are also authorized to make general comments on matters affecting their mandate, as well as to engage in individual communications to issue recommendations on a specific case at hand.

### Binding international legal instruments<sup>3</sup>

#### International Covenant on Civil and Political Rights (1966)

This Covenant recognizes that all people have the right to self-determination, a right that guarantees the freedom to pursue their cultural, social and economic development. It also establishes the inherent right to life and states that no one shall be arbitrarily deprived of their life or subjected to torture or cruel, inhuman, or degrading treatment or punishment, especially medical or scientific experimentation without their free consent. It guarantees that everyone has the right to liberty and security and that no one shall be deprived of them, and that persons deprived of their

liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Finally, it recognizes the right to equality before the law and the prohibition of discrimination for any reason (12).

#### International Covenant on Economic, Social and Cultural Rights (1966)

This treaty recognizes a wide range of economic, social, and cultural rights, such as the right to health, education, work, social security and culture, among others. In particular, it provides for the right of everyone to the opportunity to earn a living by performing the work they freely choose or accept. The Covenant also establishes the right of everyone to social security, a term which implicitly covers all the risks involved in the loss of livelihood for reasons beyond one's control. It also recognizes the right of everyone to enjoyment of the highest attainable standard of physical and mental health. Finally, the States Parties to this Covenant agree that everyone has the right to education for the full development of the human personhood and the sense of dignity, and that the States must strengthen the respect for human rights and fundamental freedoms (13).

#### Convention on the Elimination of All Forms of Discrimination against Women (1979)

This treaty condemns discrimination against women in all its forms and recognizes the rights and obligations for States Parties to promote and protect women's rights. States Parties should eradicate any act or practice of discrimination against women, including older women, and in particular should ensure that public authorities and institutions take appropriate measures to eliminate discrimination against women in the area of health care in order to ensure, on an equal basis between men and women, access to health care services (14).

<sup>2</sup> <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/IEOlderPersons.aspx>.

<sup>3</sup> The use of the terms "covenant," "convention," or similar words does not change the binding nature of these instruments. These treaties fall within the meaning of the Vienna Convention on the Law of Treaties (1969), which states that every treaty in force is binding upon the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its domestic law as justification for non-compliance with a treaty.

### **Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984)**

The provisions of this Convention require States Parties to take effective legislative, administrative, judicial, or other measures to prevent acts of torture and other cruel, inhuman, or degrading treatments in any territory under their jurisdiction. In addition, the Convention calls on each State Party to ensure that all acts of torture are offenses under its criminal law and to make these offenses punishable by the appropriate penalties that reflect their grave nature. This instrument provides that each State Party must take the necessary steps to prevent cruel, inhuman, or degrading treatment or punishment in all territories under its jurisdiction when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity (15). These provisions are extremely important to ensure the protection of the mental and physical health of older persons in public institutions.

### **Convention on the Rights of Persons with Disabilities (2006)**

This Convention recognizes the special protection that States Parties must guarantee to persons with disabilities, in order to ensure all their political, civil, economic, social, and cultural rights with the specificity that this population requires. In particular, this Convention recognizes the rights of older persons with disabilities by establishing States' obligation to provide the health services they need, including early detection and intervention, if appropriate, and services aimed at preventing and minimizing the development of new disabilities. It also specifically protects the rights of older persons with disabilities by recognizing their right to an adequate standard of living and social protection, and by requiring States to ensure this group's access to social protection programs and poverty reduction strategies (16).

### **International declarations, principles, recommendations and guidelines**

#### **Universal Declaration of Human Rights (1948)**

The Universal Declaration of Human Rights establishes that all people are born free and equal in dignity and rights, without distinction any kind, such as to ethnicity, color, sex, language, religion, political or other ideology, national or social origin, economic, birth, or any other status (17). This general provision signifies that older persons are also entitled to enjoy their basic human rights.

#### **Vienna International Plan of Action on Ageing (1982)**

This is the first international instrument that specifically addresses the issue of aging. This Plan of Action provides guidelines on policies to preserve the health of older persons and provide rehabilitation care. It was approved by the General Assembly and should be used by Member States to safeguard the rights of older persons within the context of international human rights treaties. The plan's 62 recommendations urge each country to respond to demographic trends within the context of its own traditions, structures, and cultural values, so that people of all ages can participate in striking a balance between traditional and innovative efforts to achieve harmonious development (18).

#### **United Nations Principles for Older Persons (1991)**

These Principles give priority attention to the situation and health of older persons, and focus on their independence, participation, care, self-fulfillment, and dignity. They establish that older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being, and be able to share their knowledge and skills with younger generations. The Principles also promote healthy aging, among other issues, and recommend that older persons be able to enjoy human rights and fundamental freedoms when residing in any

shelter, care, or treatment center, including full respect for their dignity, beliefs, needs, and privacy, and for the right to make decisions about their care and the quality of their lives (19).

**Committee on Economic, Social and Cultural Rights. General comment No. 6 on the economic, social and cultural rights of older persons (1995)**

This general comment of the Committee on Economic, Social and Cultural Rights is considered one of the most important standards related to the human rights and fundamental freedoms of older persons. It represents an advance in the universal definition of the rights of older persons. It sets out specific rights, such as the right to employment, social security, protection of the family, an adequate standard of living, physical and mental health, education, and culture (20).

**Committee on Economic, Social and Cultural Rights. General comment No. 14 on the right to the highest attainable standard of health (2000)**

This general comment is central to understanding the scope of the right to health and the obligations assumed by the States upon ratification of the International Covenant on Economic, Social and Cultural Rights. In this comment, the Committee on Economic, Social and Cultural Rights analyzes the content and scope of Article 12 of the Covenant on the right to health, as well as the obligations of the States Parties arising from it, and provides clear guidelines on the measures to be taken to ensure that right. The Committee establishes that the right to health is closely related to and dependent upon other human rights, such as the right to life, freedom from discrimination, equality, personal liberty, personal integrity, freedom of association, assembly and movement, food, housing, employment, and education. It refers to older people as a group whose vulnerable condition requires special programs that offer access to health facilities, goods, and services without discrimination.

The Committee also sets out the four interrelated and essential elements contained in the right to health in all its forms and at all levels, the specific application of which will depend on the conditions prevalent in a particular State Party:

**(a) Availability.** Functioning public health and health-care facilities, goods and services, as well as programs, must be available in sufficient quantity within the State Party. The precise nature of the facilities, goods and services may vary depending on numerous factors, including the State Party's level of development. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical personnel and other professionals receiving domestically competitive salaries, and essential drugs, as defined by the World Health Organization (WHO) Action Programme on Essential Drugs;

**(b) Accessibility.** Health facilities, goods and services must be accessible to everyone without discrimination, within the jurisdiction of the State Party. Accessibility has four dimensions: (i) non-discrimination; (ii) physical accessibility; (iii) economic accessibility (affordability); and (iv) access to information;

**(c) Acceptability:** All health facilities, goods and services must be respectful of medical ethics and be culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, and must also be designed to respect confidentiality and improve the health status of those concerned;

**(d) Quality:** As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation (20).

### **Madrid International Plan of Action on Ageing (2002)**

The Madrid International Plan of Action on Ageing is a landmark document on the promotion and protection of the rights of older persons. This Plan provides a comprehensive framework for the formulation of policies and programs on older persons and the aging of the population, and is an essential tool for identifying the challenges that continue to exist with respect to older people. The Plan lists the goals and recommendations identified at the Second World Assembly on Ageing held in 2002, and calls for the promotion and protection of human rights and fundamental freedoms, including the right to development. This document also combats age discrimination and promotes the dignity of older persons. It also recognizes the ability of older people to contribute to society and calls for changes in attitudes, policies, and practices so that older people can achieve their full potential.

Endorsed by 159 governments, this Plan is not legally binding and its implementation is voluntary. Implementation is evaluated every five years through an evaluation of States' actions to make progress in the rights of older persons. A key component of the review process includes the participation of civil society organizations and older persons themselves, who express their opinions and comment on the measures adopted by the States regarding implementation of the Plan (27).

### **Committee on the Elimination of Discrimination against Women. General Recommendation No. 27 on older women and protection of their human rights (2010)**

The Committee on the Elimination of Discrimination against Women, concerned about the multiple forms of discrimination experienced by older women and the invisibility of their particular vulnerability, decided to adopt a general recommendation on older women and the protection of their human rights. This is one of the most relevant instruments in the protection of

the rights of older women, since it provides concrete guidelines for the States to adopt measures to guarantee their rights. In particular, this recommendation expressly states that discrimination against older women is multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant and marital status, literacy, and other social conditions. Older adult women who belong to a minority, ethnic or indigenous group, or have been victims of displacement frequently suffer very serious forms of discrimination (22).

### **General Assembly Resolution 65/182: "Follow-up to the Second World Assembly on Ageing" (2010)**

In December 2010, pursuant to its Resolution 65/182, the General Assembly established the Open-ended Working Group on Ageing to strengthen the protection of the human rights of older persons. This is the first international forum with such an approach. In particular, its mandate is to review the existing international framework on the human rights of older persons in order to identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures (23).

### **Human Rights Council Resolution 24/20: "The human rights of older persons" (2013)**

On 27 September 2013, the Human Rights Council adopted Resolution 24/20 establishing the mandate of the Independent Expert on the enjoyment of all human rights by older persons (24). On 2 June 2014, the Independent Expert on the enjoyment of all human rights by older persons assumed her duties, with the objective of assessing, inter alia, the implementation of existing international instruments on aging while identifying best practices, raising awareness of the challenges faced by older persons in the exercise of all human rights, and ensuring that the older persons receive information on those rights (25).



### **Committee on the Rights of Persons with Disabilities. General Comment No. 2 on Article 9: Accessibility (2014)**

In this comment, the Committee on the Rights of Persons with Disabilities identifies accessibility as a precondition for persons with disabilities to live independently, participate fully and equally in society, and have unrestricted enjoyment of all their human rights and fundamental freedoms on an equal basis with others. Without access to the physical environment, transportation, information, and communications, including information and communication technologies, and to other services and facilities open to the public or for public use, persons with disabilities would not have equal opportunities to participate in their respective societies (26). These standards are also applicable to older people with disabilities.

### **2030 Agenda for Sustainable Development: Sustainable Development Goals (2015)**

The 2030 Agenda proposes to end poverty for all people, including older persons, and move towards gender equality, women's empowerment, healthy living, well-being at all ages, economic growth, full employment, and inclusive cities and human settlements (27).

### **Inter-American System of Human Rights**

The Inter-American System of Human Rights is composed of two bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (28).

The IACHR is composed of seven independent members and focuses on three main areas of work: a) the petition and case system (through which complaints related to specific cases are brought to the IACHR); b) monitoring the human rights situation in OAS member states, for

example, through country visits and published reports with recommendations; and c) work in priority thematic areas, including monitoring and technical cooperation by existing rapporteurships and working groups (29), among which is the Rapporteurship on the Rights of Older Persons.<sup>4</sup>

The Inter-American Court of Human Rights, composed of seven judges, is an autonomous institution with contentious and advisory functions, whose principal objective is to interpret and apply the American Convention on Human Rights. With respect to its contentious function, the Court may determine whether a State has incurred international responsibility for violating a right enshrined in the Convention or other human rights treaties in the Inter-American System. The Court also performs an advisory function, through which it responds to questions posed by OAS Member States or other OAS bodies on the interpretation of the American Convention and other treaties, or on the compatibility of national legislation with the Convention (28).

### **Binding Inter-American legal instruments<sup>5</sup>**

#### **American Convention on Human Rights (Pact of San José, 1969)**

This treaty is the Region's principal human rights instrument, due to the number of rights it recognizes and its predominant role in the human rights obligations of the States Parties. It recognizes the right to life, physical integrity, and personal liberty, among others. Personal liberty is especially important for older persons, since policies, plans, programs, laws, or practices that deprive older persons of their liberty in institutions (such as hospitals, psychiatric wards, health facilities, prisons, long-term care facilities, or other institutions) can affect their physical and mental health. The Convention

<sup>4</sup> <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/mandate/what.asp>

<sup>5</sup> The use of the terms "covenant," "convention," or similar words does not change the binding nature of these instruments. These treaties fall within the meaning of the Vienna Convention on the Law of Treaties (1969), which states that every treaty in force is binding upon the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its domestic law as justification for non-compliance with a treaty.

further recognizes that all persons, including older persons, are entitled, without discrimination, to equal protection of the law (30).

### **Inter-American Convention to Prevent and Punish Torture (1985)**

All acts of torture and any cruel, inhuman, or degrading treatment or punishment against older persons violate human dignity, as well as the human rights and fundamental freedoms set out in the aforementioned international and regional human rights instruments. Each State must prevent and punish torture and other forms of cruel, inhuman, or degrading treatment or punishment within its jurisdiction (31).

### **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)**

This instrument was the first binding international human rights treaty that specifically referred to the protection of older persons as a human right. Article 17 ("Protection of the Elderly") is critically important because it ensures that the physical, mental, and moral integrity of an elderly person will be respected and that he or she will not be subjected to cruel, inhuman, or degrading treatment. It states that the specific health needs of older persons require special medical care, work programs, and the establishment of social organizations. The Protocol guarantees that every human being should enjoy the right to health and that States must recognize health as a public good, prevent further abuses, and promote education on health issues. This instrument also ensures the right to non-discrimination and recognizes persons with physical and mental disabilities, including older persons, as particularly vulnerable groups who are entitled to special medical care and rehabilitation (32).

### **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (1994)**

This instrument is founded on the conviction that the elimination of violence against women is essential for their individual and social development. The Convention provides that all women, including older women, have the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include the right to have their life and their physical, mental, and moral integrity respected (33). This instrument is highly useful in eradicating physical, sexual, and psychological violence against women, which frequently occurs in the family, the community, and in medical and long-term care facilities.

### **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999)**

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with mental or physical disabilities, and to promote their full integration into society (34). It is the first international convention to specifically address the rights of persons with disabilities. It is an effective instrument to protect the human rights of older persons with disabilities, especially those living in long-term care facilities.

### **Inter-American Convention against All Forms of Discrimination and Intolerance (2013)**

This Convention states that discrimination is "any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties" (35), and that discrim-

ination may be based on various grounds such as age, among others, which in certain cases may overlap. It also states that “indirect discrimination shall be taken to occur, in any realm of public and private life, when a seemingly neutral provision, criterion, or practice has the capacity to entail a particular disadvantage for persons belonging to a specific group, or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law” (35). These provisions are central to formulating, implementing and evaluating public policies related to older persons.

### **Inter-American Convention on Protecting the Human Rights of Older Persons (2015)**

This Convention is a substantial step forward in the rules and standards protecting the human rights of older persons worldwide. It is the first binding international legal instrument that not only establishes and recognizes new rights of older persons, but also provides clear guidelines regarding States’ obligations in terms of public policies, standards, and practices to guarantee the rights of this group. This treaty makes older people a legally-protected category of persons, reshapes ideas about old age, and transforms the place of older people in the social and political realms.

Among the new rights it recognizes are the rights to life and dignity in old age, independence and autonomy, and long-term care. It also interprets the rights established in other treaties as applied to older people, including the right to equality and non-discrimination, free and informed consent on health and safety matters, a life free of violence, and prevention of torture and other cruel, inhuman, or degrading treatment, as well as economic, social, cultural, and environmental rights. It also provides for specific rights such as the right to accessibility and mobility for older persons and rights related to risk situations and humanitarian emergencies.

With regard to the right to health, this treaty is also very progressive in terms of its different provisions. It estab-

lishes that older persons have the inalienable right to express their free and informed consent on health matters, as well as the right to a comprehensive system of care that protects and promotes their health, provides social services, food and nutritional security, water, clothing, and housing, and promotes the ability of older persons to stay in their own home and maintain their independence and autonomy.

Finally, this instrument also creates obligations for States in terms of public policies, particularly those regarding the health of older persons. It stipulates that States Parties must design and implement comprehensive-care oriented intersectoral public health policies that include health promotion, the prevention and care of disease at all stages, and rehabilitation and palliative care for older persons, to promote enjoyment of the highest level of physical, mental, and social well-being.

In order to monitor the commitments made under this Convention and promote its effective implementation, the Convention establishes a Follow-up Mechanism comprised of the Conference of States Parties and a Committee of Experts, who are appointed by each of the States Parties to the Convention. The Follow-up Mechanism will be established upon deposit of the tenth instrument of ratification or accession.

In addition, the Convention establishes that any person or group of persons, or non-governmental entity legally recognized in one or more OAS Member States may submit petitions to the IACHR containing reports or complaints of violation of any of the provisions contained in this Convention by a State Party (7).

### **Regional declarations, principles, recommendations, standards, and technical guidelines**

#### **American Declaration on the Rights and Duties of Man (1948)**

This Declaration seeks to protect civil, political, economic, social, and cultural rights and fundamental freedoms (36)

and is part of what is known as the regional *corpus iuris* [body of law] of human rights. Although it is not an international treaty that must be ratified by the States, it is understood under international custom that this Declaration is binding on the countries of the Americas.

### **Resolution CSP26. R20 of the Pan American Health Organization: “Health and Aging” (2002)**

In this Resolution, the 26th Pan American Sanitary Conference of the Pan American Health Organization (PAHO) urged Member States to adopt national policies and plans for the implementation of the International Plan of Action on Aging and provide adequate support for the implementation of priority areas, such as the access of older persons to age-appropriate health care, essential drugs, and vaccines. It also duly urged the Member States to promote and protect the human rights and freedoms of older persons and develop community-based long-term care options, including supportive housing and assisted living (37).

### **Plan of Action on the Health of Older Persons, Including Active and Healthy Aging: Final Report (2019)**

This report addresses the progress made by the Member States in meeting the goals and targets set out in the Plan of Action approved by PAHO Member States in 2009, and briefly reviews the health and aging situation in the Region. The report indicates that despite significant progress in the Region over the last 10 years, the unprecedented speed of the demographic transition, the existence of other priorities, and a complex socioeconomic situation will require health systems to adapt more quickly to this context.

In addition, this document presents new lines of action agreed upon by the Member States, such as: (a) include aging and health as an aspect of local, national, regional, and global public policy, with active participation of Member States in all these contexts; (b) improve

strategies to promote healthy aging with a life-course approach specifically designed to increase healthy life expectancy and maintain the highest level of function in older persons to reduce their dependence on caregivers; (c) increase the capacity of health systems and integrated health service delivery networks to respond effectively and efficiently to the needs created by population aging; (d) develop the ability to create a long-term care system within countries; (e) develop an innovative holistic vision of human resources that enables health systems and services to meet the health needs of older people; and f) increase the capacity to generate the information and evidence provided to health systems (38).

### **Strategy and Plan of Action on Dementias in Older Persons: Final Report (2020)**

The Strategy and Plan of Action on Dementias in Older Persons for the period 2015–2019 was approved at the 54th PAHO Directing Council in 2015, considering the following statement of the WHO Director-General: “The need for long-term care for people with dementia strains health and social systems, and budgets. The catastrophic cost of care drives millions of households below the poverty line. The overwhelming number of people whose lives are altered by dementia, combined with the staggering economic burden on families and nations, makes dementias a public health priority.” The Strategy and Plan of Action contains five strategic lines of action and a target for 2019. The five strategic lines of action are:

- 1) Promote plans, policies, and programs that promote and respect human rights to address risk factor reduction, prevention and reduction of dependence, and provision of care (including long-term care) associated with dementias;
- 2) Establish in health systems and health services networks, interventions for prevention and quality care for persons with or at risk of dementias;



3) Implement a quality long-term care system that addresses the needs of dependent persons, their families, and caregivers, based on a primary health care approach, respect for human rights, gender equality, and equity within the strategic framework of universal health access and universal health coverage;

4) Develop or strengthen the necessary human resources training to address health needs of persons with or at risk of dementias; and

5) Improve research and surveillance capacity to generate and collect quality information to address the social and health needs of persons with dementias

The final report, prepared in 2020, indicates that despite significant progress in implementing these strategic lines of action in the Region over the last 10 years, the marked impact of dementia in the Region will require accelerated actions and interventions by Member States, the Pan American Sanitary Bureau, and other strategic partners. It is also essential to continue disseminating scientific arguments that promote opportunities to prevent Alzheimer's disease and other dementias through interventions on risk factors, and to promote continued preventive efforts on dementias among Member States, taking into account that these risk factors are common to other health problems (40).

### **IACHR Resolution 1/2020: "Pandemic and Human Rights in the Americas" (2020)**

On 10 April 2020, the IACHR adopted Resolution 1/2020 entitled "Pandemic and Human Rights in the Americas," in light of the unprecedented global health emergency facing the Americas and the world caused by the rapid global spread of COVID-19. The section on recommendations specifically refers to older people to ensure that they are respected as full legal persons under human rights law, in connection with the COVID-19 pandemic. The resolution makes the following recommendations: (a) adopt the necessary measures to prevent infec-

tion, prioritize medical care, and avoid ageism, guaranteeing older people the right to provide consent in health-related matters, and facilitating contact with family members; (b) ensure older people's access to public services and essential goods, including differential and preferential treatment for older persons, identifying and eliminating obstacles and addressing the digital divide; c) strengthen monitoring and surveillance measures to prevent violence toward and neglect of older persons, and d) ratify or accede to the Inter-American Convention on Protecting the Rights of Older Persons (41).

### **How these standards should be applied and how international and regional human rights systems can be used strategically**

The instruments and mechanisms of the United Nations and the Inter-American System of Human Rights provide a solid basis for the adoption of measures that promote and protect the rights of older persons in the Region of the Americas. These measures should involve all segments of society: the various branches of government, civil society, academia, the media, and society as a whole. All stakeholders and interest groups should be familiar with the human rights and protections guaranteed by these instruments and should use them to review and improve national laws, policies, plans, programs, and practices. In addition, all sectors of society must respect the dignity and personal integrity of older persons and promote the protection of their fundamental rights and freedoms.

The organs of the United Nations human rights system and the Inter-American System of Human Rights are key tools to complement and support the work done by the States at the national level, and can serve as monitoring and complaint bodies as well as entities that cooperate with the States and provide technical assistance to them for the promotion and protection of the human rights of older persons.

**Ministries of health, education, and labor, and other relevant bodies.** These entities have the obligation to know, apply, and disseminate the international instruments voluntarily ratified by their States, which recognize and protect human rights. These legal instruments create a range of obligations in terms of public policies, legislation, budgets, and practices related to older persons. Among other responsibilities, human rights conventions call for protection against violations of individual freedom and autonomy, as well as guaranteeing the economic, social, cultural, and environmental rights of older persons.

Governments have an obligation to align their programs, plans, policies, and practices with the human rights standards set forth in international instruments. To this end, the recommendations of the different bodies of the United Nations System and the Inter-American System are extremely useful as they offer guidance and guidelines to the States on which measures to adopt and how to do so from a human rights perspective.

In addition to the obligation to not violate the rights of older persons, States must also ensure that third parties are prevented from doing so. This is particularly relevant when formulating regulations on long-term care institutions, public and private health facilities, as well as any other situation in which the prevention of abuse, violence and mistreatment must be ensured. Human rights education is also a key tool for promoting and protecting the rights of this group. Along these lines, States must also ensure that they offer public officials extensive education and training on protecting the human rights of older persons.

**Management teams at health care facilities, long-term care institutions and nursing homes.** The management teams of these facilities must ensure that the admission, accommodations, and care of older persons comply with human rights standards at all times,

where informed consent is of paramount importance. They also need to ensure that all staff are aware of, understand, and apply these standards.

**Nursing and other health care staff in hospitals, clinics, nursing homes, and other facilities** must be aware of and act in accordance with the rights of older persons and ensure that those rights are respected and protected in every instance of contact with them. Health care staff should bear in mind that they may be the last line of defense in protecting the physical, psychological, and moral integrity of older persons and that they are required to report violations of any of the rights of these people to the appropriate authorities.

**Admissions staff** must always obtain the informed consent of older persons admitted to the medical facility in order to comply with international human rights standards. All other staff in these institutions must be sure to obtain informed consent for any treatment and care provided.

**Legislators and lawmakers** must be thoroughly familiar with international human rights law and are responsible for ensuring that all national laws comply with obligations under international human rights conventions and instruments. If these laws are not in compliance, they must be reviewed and amended to bring them in line with international standards.

**Justice system officials** must apply international and regional human rights law in all decisions and promote respect for human rights and fundamental freedoms without discrimination. The role of the judiciary is central to the observance of international human rights law to promote and protect the rights of older persons. To this end, members of the judiciary must receive human rights training to ensure that human rights standards and principles are incorporated in all of their decisions and rulings.

**Member of security forces** must fully understand the importance of international human rights law in protecting the rights and freedoms of individuals and groups within society. They must ensure respect for and the protection of those rights and freedoms for all older persons. To this end, governments have an obligation to provide human rights training to all law enforcement personnel.

**National human rights institutions or Office of the Ombudsman.** These institutions must follow up on citizen complaints and visit older persons in the community and in health facilities, and particularly those in institutions, to ensure that their human rights are respected under international and national laws. They must also prioritize the human rights of older persons, since they play a key role in disseminating and promoting the human rights of this population.

**Families** play a key role in protecting the rights of older persons, since they can use their relationships to protect the rights and autonomy of the elderly, promote cultural transformation on how aging is viewed, and prevent instances of discrimination and mistreatment in the family itself and society as a whole.

**Organizations for the elderly** are responsible for ensuring compliance with the human rights of older persons. They can become key spaces for providing care

and advice, recreational options, and meeting places that promote the eradication of situations of discrimination and violence.

**Non-governmental organizations working with older persons or for the promotion and protection of their rights** play a pivotal role in the ongoing demand that States ensure the full realization of the rights of older persons. They should work to publicize information on their rights and make use of regional and international mechanisms protecting these rights, invoking such mechanisms whenever they are violated at the local level within countries. Networking and partnerships between nongovernmental organizations are highly effective for combining forces and making optimal use of available resources.

**The media** play a fundamental role in the cultural transformation of aging and in promoting the human rights of older persons. The media should always ensure that communication about older people is free of stereotypes, stigmatization, and discrimination, and should promote images that depict older people as productive, able to care for themselves, and contributing in different ways to the development of society and families. In addition, the media should responsibly cover issues related to the abuse and neglect of older persons, and violations of their human rights.

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# Annexes

## Annex 1. United Nations Human Rights System

Table A.1.1 shows six international instruments of the United Nations human rights system that protect the fundamental rights and freedoms indicated. Table A.1.2 lists the countries that are parties to these instruments.

**Table A.1.1.** Select International Instruments of the United Nations Human Rights System that Protect the Listed Fundamental Rights and Freedoms

Fundamental rights and freedoms	Universal Declaration of Human Rights	International Covenant on Civil and Political Rights	International Covenant on Economic, Social and Cultural Rights	Convention on the Elimination of All Forms of Discrimination against Women	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Convention on the Rights of Persons with Disabilities
Life	Art. 3	Art. 6, para. 1				Art. 10
Personal integrity	Art. 5	Art. 7			Arts. 1 & 16	Art. 17
Personal liberty	Art. 3	Art. 9				Art. 14
Due process	Art. 8	Art. 14			Art. 13	
Privacy	Art. 12	Art. 17				Art. 22
Freedom of expression	Art. 19	Art. 19, para. 2				Art. 21
Movement	Art. 13	Art.12		Art. 15, para. 4		Art. 20
Equal protection of the law	Art. 7	Art. 26		Arts. 3 & 15, para.1		Art. 12
Judicial protection	Art. 10	Art. 14		Art. 15, para. 2	Art. 13	Art. 13
Work	Art. 23		Arts. 6 & 7	Art. 11		Art. 27
Enjoyment of the highest attainable standard of physical and mental health	Art. 25, para. 1		Art. 12	Art. 12		Art. 25
Education	Art. 26		Art. 13	Art. 10		Art. 24
Culture	Art. 27		Art. 15	Art. 13, section (c)		
Autonomy						Art. 19
Accessibility						Art. 9
Protection of women	Art. 25, para. 2		Art. 12, para. 2 (a)	All		Art. 6
Protection of older persons	Art. 25, para. 1					Arts. 25 & 28
Social security	Art. 23		Art. 9	Art. 11		Art. 28

**Table A.1.2.** Countries in the Region of the Americas that are Parties to Select International Instruments of the United Nations Human Rights System

International instrument	States Parties
<b>Universal Declaration of Human Rights</b>	Not subject to ratification
<b>International Covenant on Civil and Political Rights</b>	Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela (Bolivarian Republic of)
<b>International Covenant on Economic, Social and Cultural Rights</b>	Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)
<b>Convention on the Elimination of All Forms of Discrimination against Women</b>	Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b>	Antigua and Barbuda, Argentina, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay, and Venezuela (Bolivarian Republic of)
<b>Convention on the Rights of Persons with Disabilities</b>	Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)

## Annex 2. Inter-American System of Human Rights

Table A.2.1 shows international instruments of the Inter-American System of Human Rights that protect the fundamental rights and freedoms indicated. Table A.2.2 lists the countries that are parties to these instruments.

**Table A.2.1.** Select International Instruments of the Inter-American System of Human Rights that Protect the Listed Fundamental Rights and Freedoms

Fundamental rights and freedoms	American Declaration of the Rights and Duties of Man	American Convention on Human Rights	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights	Inter-American Convention on Protecting the Human Rights of Older Persons	Inter-American Convention Against All Forms of Discrimination and Intolerance	Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women	Inter-American Convention to Prevent and Punish Torture
Life	Art. I	Art. 4		Art. 6			Art. 4, section (a)	
Personal integrity	Art. XXV	Art. 5		Arts. 9 & 10			Art. 4	Art. 6
Personal liberty	Art. I	Art. 7		Art. 13			Art. 4, section (c)	
Due process	Art. XVIII	Art. 8					Art. 7, section (f)	Art. 8
Privacy	Art. V	Art. 11		Art. 16				
Freedom of expression	Art. IV	Art. 13		Art. 14				
Movement	Art. XIII	Art. 22		Art. 15				
Equal protection of the law	Art. II	Art. 24		Art. 30	Art. 2	Arts. II & III	Art. 4, section (f)	Art. 8
Judicial protection	Art. XXVI	Art. 25		Art. 31	Art. 10		Arts. 4, section (g), & 7	
Work	Art. XIV		Arts. 6 & 7	Art. 18		Art. III, para. 1 (a)		
Enjoyment of the highest attainable standard of physical and mental health	Art. XI		Art. 10	Art. 19		Art. III, para. 2 (a) & (b)	Art. 4, section (b)	
Education	Art. XII		Art. 13	Art. 20		Art. III, paras. 1 (a) & 2 (b)		
Culture	Art. XIII		Art. 14	Art. 21		Arts. III, para. 2, & IV, para. 2		
Autonomy				Art. 7				
Accessibility				Art. 26				
Protection of rights of women	Art. VII			Arts. 5, 20, & 23			All	
Protection of older persons	Art. XVI		Art. 17	All			Art. 9	
Social security				Art. 17				



**Table A.2.2.** Countries in the Region of the Americas That Are Parties to the Select International Instruments of the Inter-American System of Human Rights

International instrument	States Parties
<b>American Declaration of the Rights and Duties of Man</b>	Not subject to ratification
<b>American Convention on Human Rights</b>	Argentina, Barbados, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)
<b>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)</b>	Argentina, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of)
<b>Inter-American Convention on Protecting the Human Rights of Older Persons</b>	Argentina, Bolivia (Plurinational State of), Chile, Costa Rica, Ecuador, El Salvador, Peru, and Uruguay
<b>Inter-American Convention Against All Forms of Discrimination and Intolerance</b>	México and Uruguay
<b>Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities</b>	Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela (Bolivarian Republic of)
<b>Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women</b>	Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)
<b>Inter-American Convention to Prevent and Punish Torture</b>	Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, México, Nicaragua, Panama, Paraguay, Peru, Uruguay y Venezuela (Bolivarian Republic of)



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