

# Webinar

## Access to Justice in Older Age



Access to Justice is one of the new areas of older people's human rights that will be discussed at the 11th session of the Open-Ended Working Group on Ageing in New York from 6-9th April 2020. The UN will soon call for written submissions on this topic, which will play an important role in shaping the debates that will happen at the 11th session. A strong civil society response to this consultation is vital.

This webinar will explore some of the key issues and barriers around access to justice in older age. It will also offer tips and support on how you can prepare high quality substantive inputs to the upcoming UN consultation.

Moderator



**Susan Somers**  
INPEA and GAROP  
Steering Group member

Panelist



**Bill Mitchell**  
Townsville Community  
Legal Service, Australia





## OUR PURPOSE

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Our purpose in holding the webinar :

- ◆ Inform civil society about the right to access to justice including its contemporary formulation and key discussion aspects for older persons
- ◆ Assist civil society to prepare responses to the Open-ended Working Group on Ageing's call for input on the substantive issue of access to justice



## WHAT IS ACCESS TO JUSTICE?

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- ❖ Rights that guarantee equal access to an independent and impartial process and the opportunity to receive a fair and just trial when that individual's liberty or property is at stake
- ❖ Access to justice involves judicial recourse, but also the availability of other accessible, affordable, timely and effective means of redress or remedy
- ❖ Access to justice has developed over time in international and regional human rights instruments, but not explicitly formulated until the adoption of the Convention on the Rights of Persons with Disabilities



## WHAT IS ACCESS TO JUSTICE

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- ❖ A cross-cutting right that must be understood and interpreted in line with other principles such as equal recognition before the law
- ❖ It enables and enhances other rights such as the right to health as it guarantees judicial and administrative protection of that right
- ❖ Includes the concept of legal needs. Access to justice and legal needs are different but in practice the terms tend to merge
- ❖ It is expressed variously as a freestanding right or collection of freestanding rights





## GLOBAL OUTLOOK

- ◆ 1.5 billion people cannot obtain justice for civil, administrative, or criminal justice problems
- ◆ 4.5 billion people are excluded from the opportunities the law provides, such as employment and housing
- ◆ 253 million people live in extreme conditions of injustice
- ◆ Altogether 5.1 billion people, two thirds of the world's population, face at least one of these justice issues



Guiding Question 4. What are the existing provisions to guarantee legal assistance for older persons?



## INEFFECTIVE ACCESS

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The World Justice Project describes those who cannot access justice as:

- ◆ People who cannot obtain justice for everyday civil, administrative or criminal problems
- ◆ People who are excluded from the opportunities the law provides
- ◆ People who live in extreme conditions of injustice

<https://worldjusticeproject.org>



## **EFFECTIVE ACCESS (OECD)**

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Effective access to justice can be assessed against 3 components:

- ◆ The nature and extent of unmet legal and justice needs
- ◆ The impact of unmet legal and justice needs on individuals, the community and the state
- ◆ The effectiveness of specific models of legal assistance in meeting these identified needs

<https://www.oecd.org/gov/access-to-justice.htm>





## **EFFECTIVE ACCESS MEANS ...**

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### **1. Empower people and communities**

People are empowered so that they can act when a legal need arises. They are helped to understand the law and seek a solution, with legal aid provided to the most vulnerable.

### **2. Access to people-centered justice services**

People have access to services that are responsive to their needs and offer alternative and less adversarial pathways to justice. One-stop shops provide a range of services under one roof, while specialist services help those with more complex problems.



## EFFECTIVE ACCESS

### 3. Fair outcomes

People achieve a resolution to their problem that is fair and meets standards for human rights. Remedies are appropriate and promote reconciliation. Data is used to judge whether people receive a satisfactory resolution. Grievance mechanisms listen and respond to those who feel badly treated.



Guiding Question 7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?



## RELATIONSHIP WITH THE RULE OF LAW

- ◇ Access to justice is a basic principle of the rule of law.
- ◇ In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable



Guiding Question 9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.





## PART OF THE DEVELOPMENT AGENDA

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- ◇ Access to justice is an important part of the UN's development agenda.
- ◇ The Sustainable Development Goals (SDGs) at Goal 16 prescribe 12 targets, each with their own indicators.
- ◇ Target 16.3 is to “Promote the rule of law at the national and international levels and ensure equal access to justice for all”

<https://sustainabledevelopment.un.org/sdg16>



## LEGAL AID & LEGAL ASSISTANCE

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- ◆ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
- ◆ The Guidelines also note the need for special measures to ensure meaningful access to Legal Aid for older persons
- ◆ Although criminal justice is a pressing issue, findings from legal needs surveys reveal that the most frequent legal problems faced by older persons, are civil ones.

<http://www.internationallegalaidgroup.org/>



## A NORMATIVE EXAMPLE: ARTICLE 13 CRPD

### Equality before the courts and right to a fair trial:

- ◆ Accessibility and access to information
- ◆ Procedural and age-appropriate accommodations
- ◆ Right to claim justice and stand trial
- ◆ Presumption of innocence
- ◆ Legal aid

### Right to an Effective Remedy:

- ◆ Duty to investigate
- ◆ Independent monitoring frameworks
- ◆ Redress and reparation

### Participation in the administration of justice:

- ◆ Access to justice as an integral part of governance
- ◆ Training in the fields of administration of justice and legal education

(A/HRC/37/25)





## RECOGNITION OF THE RIGHT

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The right to access to justice is recognised in many sources:

- ◆ International Law and Commentary
- ◆ Regional Instruments
- ◆ Statements and Reports



## RECOGNITION IN INTERNATIONAL LAW

- ◆ The Universal Declaration of Human Rights (UDHR) recognises a broad conception of the right:

“everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or law”

- ◆ The ICCPR provides for the same right in more detail
- ◆ Also found in the DRIP, CRPD and UNCRC



## RECOGNITION IN THE UN PRINCIPLES

- ◆ The United Nations Principles for Older Persons provide limited recognition of access to justice under Care, at Principle 12 which states,  
“12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.”
- ◆ Also under the principles of ‘dignity’ at Principles 17-18.

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



## RECOGNITION IN REGIONAL INSTRUMENTS

- ◆ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (the African Protocol) (art 4)
- ◆ Inter-American Convention on Protecting the Human Rights of Older Persons (the Inter-American Convention) (art 31)
- ◆ Various European human rights standards



Guiding Question 1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?





## RECOGNITION IN STATEMENTS & PRINCIPLES

- ◆ The Declaration of the High-level Meeting of the General Assembly on the Rule of Law
- ◆ The OECD Riga Statement “Investing in Access to Justice for all!”
- ◆ Basic Principles on the Role of Lawyers
- ◆ Basic Principles on the Independence of the Judiciary
- ◆ Guidelines on the Role of Prosecutors

<https://www.oecd.org/gov/equal-access-to-justice-oecd-expert-roundtable-latvia-2018.htm>



## SPECIFIC EXAMPLES

- ◇ Groups that include older persons (e.g. women)
- ◇ Themes that include older persons (e.g. housing, poverty)
- ◇ Recognition of older persons (e.g. other status)
- ◇ Legal Needs research (e.g. Australia)
- ◇ Specific Examples: Prisoners, Peasants, Indigenous persons



Guiding Question 2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?



## OBSTACLES & BARRIERS

- ◇ Invisibility of older people
- ◇ Failure to recognise that crimes against older people have a disproportionate impact on their independence, development, and security
- ◇ ‘Well intentioned ageism’ means that alternative approaches are adopted that concentrate on welfare



Guiding Question 9. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.



## OBSTACLES & BARRIERS

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- ❖ Lack of appropriate support through the criminal justice process
- ❖ Lack of expertise and specialist services
- ❖ Fear of victimisation
- ❖ Low self-esteem
- ❖ Pre-conceived ideas about older people as witnesses
- ❖ Ageism and age discrimination





## OBSTACLES & BARRIERS

- ◆ The lack of expedition in justice systems
- ◆ Social, digital and financial exclusion
- ◆ Pre-conceived ideas about older people as witnesses
- ◆ Financial disadvantage
- ◆ Inadequate social security, social protections and social supports
- ◆ Individual psychological barriers



Guiding Question 5. What are specific challenges encountered by older persons in accessing justice and remedy in your country?



## OBSTACLES & BARRIERS

- ❖ A particular barrier older persons face is the time legal processes, especially litigation, take. While this is a universal problem, for older persons this becomes a critical issue, as in many cases the lengthening of the process means that by the time the process ends they are not alive to enjoy the outcome
- ❖ Older persons found it difficult to identify what they need or want to know about their legal rights. The research points to a grave knowledge gap, likely made worse by digital disruption or their place on the digital continuum



## SOLUTIONS

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- ◆ Based on data and evidence based;
- ◆ innovative and collaborative;
- ◆ focus on just outcomes;
- ◆ use technology as a tool;
- ◆ have sustainable financing



Guiding Question 6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?



## **SOLUTIONS: AGE-FRIENDLY?**

The “location” of justice, its physical accessibility and “age-friendliness” is also of key importance. Older people are sometimes home-bound, or have issues and difficulties in physically accessing the courts (no accessible or near public transport). Once they get to the court they are “lost” in the big halls, both physically, mentally and legally. Establishing an “age-friendly” court system is essential.



Guiding Question 3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?





## NORMATIVE CONTENT: DESCRIPTION

- ❖ Older persons have the right to access to justice on an equal basis with others, including through the provision of procedural accommodations in all legal and administrative proceedings at any stage in order to facilitate their effective role as direct or indirect participants, and prevent unnecessary delay in legal proceedings, particularly in situations of immediacy.
- ❖ Older persons have the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against them or for the determination of their rights and obligations of a civil, labour, fiscal, or any other nature.
- ❖ Older persons have the right to prompt, effective and appropriate remedies and redress.



## **NORMATIVE CONTENT: ELEMENTS**

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- ◆ Legal Guarantees
- ◆ Non-discrimination
- ◆ Availability and accessibility
- ◆ Remedies and redress
- ◆ Older prisoners



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From a rights-based perspective, access to justice refers to “the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through formal and informal justice systems, for grievances in accordance with human rights principles and standards.”



## KEY SOURCES

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- ◆ <https://www.oecd.org/gov/access-to-justice.htm>
- ◆ <https://worldjusticeproject.org>
- ◆ <https://www.lawcouncil.asn.au/justice-project/access-to-justice>
- ◆ <https://law-tech-a2j.org>
- ◆ <https://www.sdg16hub.org/data-initiative>
- ◆ <https://www.justiceinitiative.org/>
- ◆ <http://iophri.org/>
- ◆ [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid\\_Report01.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf)



**Thank you!**

**For further information, visit:**  
**[www.rightsofolderpeople.org](http://www.rightsofolderpeople.org)**



The International Federation on Ageing was pleased to co-host this webinar with GAROP.





# IFA 15TH GLOBAL CONFERENCE *RIGHTS MATTER*

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