

Older persons' human rights & the COVID pandemic: are they compatible?

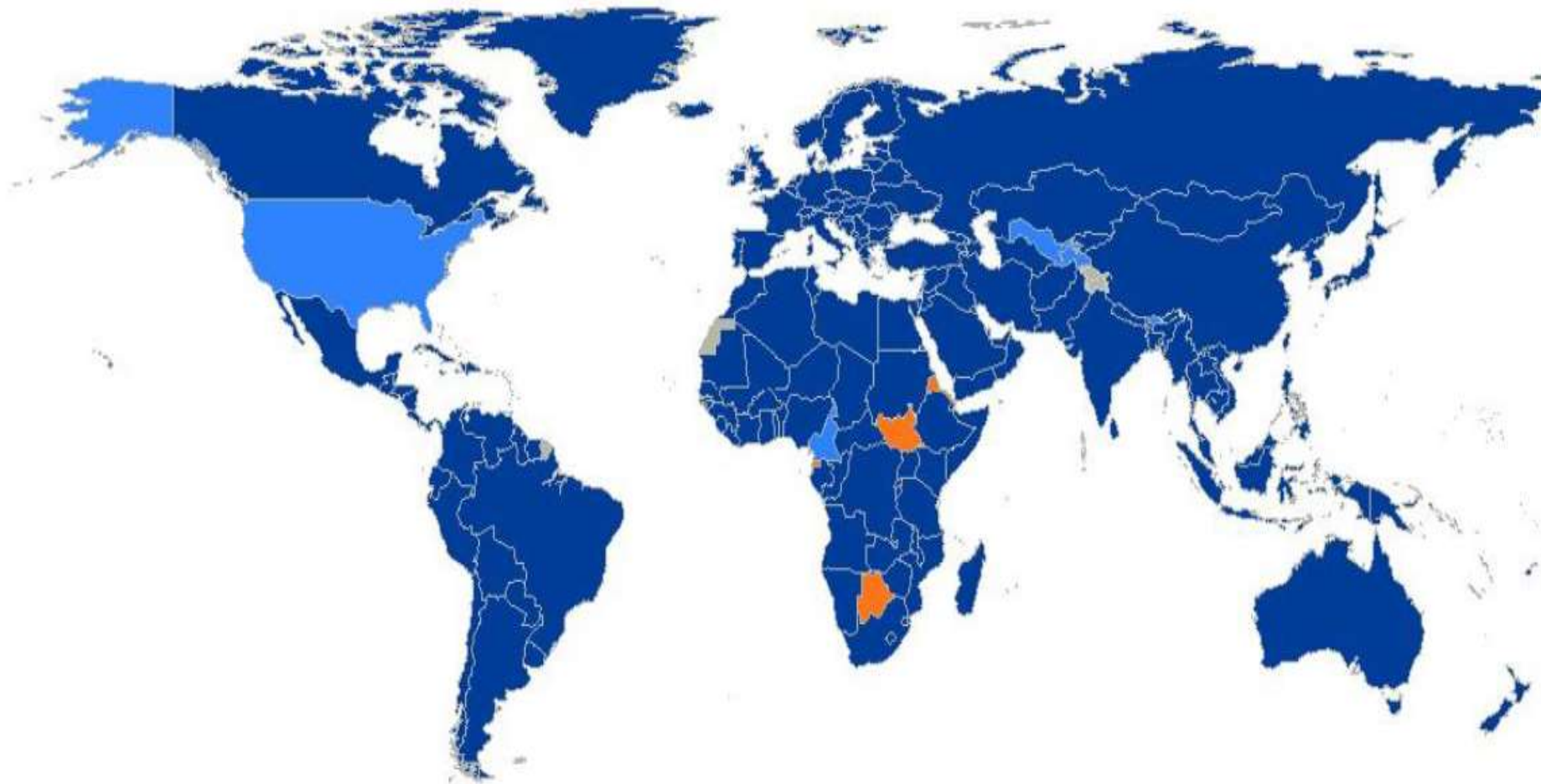
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Convention on the Rights of Persons with Disabilities

Last Updated: 07 Jan 2020



Country Status

State Party (181) Signatory (9) No Action (8)

Of 50 articles, most salient are:-

- **Article 12**: Equal recognition before the law; equal legal capacity, appropriate support, expression of will & preferences; safeguarded against undue influence & abuse;
- **Article 14**: Liberty and security of the person;
- **Article 16**: Freedom from exploitation, violence & abuse;
- **Article 19**: Living independently & being included in the community;
- **Article 22**: Respect for privacy;
- **Article 23**: Respect for home, the family & relationships;
- **Article 25**: Enjoyment of the highest attainable standard of health

The existing human rights landscape -
pockmarked with craters of violations

- **Invisibility of older persons in human rights systems**
- **Implementation gap between the articulation of human rights values principles in human rights frameworks & the actual enjoyment of such**
- **Debate by UN Open Ended Working Group re new UN treaty on rights of older people**

- Doron, I. Ithaka: On the journey to a new international human rights convention for the rights of older persons. In Ruebner, R., Do, T., & Taylor, A. (Eds.) *International and Comparative Law on the Rights of Older Persons* (pp. 18-34. Lake Mary, FL.: Vandepias Publishing, 2015.
- Herro, A. and Byrnes, A. (2020) Framing contests over the human rights of older persons. *Australian Yearbook of International Law*. 38
- United Nations Human Rights Council (2018). *Report of the Independent Expert on the human rights of older persons*. UN Doc A/HRC/39/50, para 88.
- Biggs S, Haapala I. Elder mistreatment ageism and human rights *International Psychogeriatrics* 2013;25 :1299-1306.



Ageism

Pre-COVID: everywhere & getting worse

During COVID

Citation: Chang E-S, Kanno S, Levy S, Wang S-Y, Lee JE, Levy BR (2020) Global reach of ageism on older persons' health: A systematic review. PLoS ONE 15(1): e0220857. <https://doi.org/10.1371/journal.pone.0220857>

Results


Ageism led to significantly worse health outcomes in 95.5% of the studies and 74.0% of the 1,159 ageism-health associations examined. The studies reported ageism effects in all 45 countries, 11 health domains, and 25 years studied, with the prevalence of significant findings increasing over time ($p < .0001$). A greater prevalence of significant ageism-health findings was found in less-developed countries than more-developed countries ($p = .0002$). Older persons who were less educated were particularly likely to experience adverse health effects of ageism. Evidence of ageism was found across the age, sex, and race/ethnicity of the targeters (i.e., persons perpetrating ageism).

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COMMENTARY

There is nothing new under the sun: ageism and intergenerational tension in the age of the COVID-19 outbreak

Finally, the most vulnerable members of our society, including older adults in long-term care facilities and those with severe physical and cognitive impairments, face substantial threats to their autonomy, unrelated to the current outbreak. It is our duty to ensure that the autonomy of the most vulnerable members of society is not hampered and that their voices are heard. Older people's rights should not be compromised, and human rights should not be differentially allocated based on chronological age (United Nations Human rights – Office of the High Commissioner, 2020; Age Platform Europe, 2020).

LIAT AYALON 

The zeitgeist re the “worth” of older people

Moreover, older adults have “already lived their lives,”
and now it is time for them to step down. Whereas

Exacerbating inadequacies in aged care: tales of neglect



Royal Commission
into Aged Care Quality and Safety

ROYAL
COMMISSION
INTO AGED
CARE

NEWS



Much of the focus has been dead or
alive



FILE – In this Feb. 29, 2020, file photo, a staff member blocks the view as a person is taken by a stretcher to a waiting ambulance from a nursing facility where people are sick and being tested for the COVID-19 virus in Kirkland, Wash. From Miami to Seattle, nursing homes and other facilities for the elderly are stockpiling

a human rights-based practice of health care based on equity of access, autonomy and dignity.

Article 25: Enjoyment of the highest attainable standard of health without discrimination

the same quality provided to others

respecting specific needs that arise on account of disability.

on the basis of free and informed consent



What else is at risk here...?

- **Article 14**: Liberty and security of the person;
- **Article 19**: Living independently & being included in the community;
- **Article 22**: Respect for privacy;
- **Article 23**: Respect for home, the family & relationships;

10 advocacy tips for health professionals

1. Reference human rights when planning/writing policies or guidelines for health care services;
2. Highlight importance of autonomy, free & informed consent, supported decision-making, and respect for will and preferences when delivering treatment.
3. Ensure human rights -based principles of capacity assessment (i) presumption of capacity; (ii) capacity is not diagnosis-bound
4. Rigorous and respectful pursuit of will & prefs with authentic advance care planning;
5. Understanding the human rights violations that underpin changed behaviours in dementia re unmet need, will and preferences (Articles 12 and 25).

Cont'd: Advocacy tips



6. Advocate for right to autonomy & consent re segregation in residential care. Push for mandatory connection.

7. Explicitly reference human rights when doing medicolegal assessments & reports, e.g. applications for guardianship or protection/administration;

8. Call out ageism

9. Push older people forwards. Ensure voices heard in shaping broader, macro-level health care policies regarding their rights in residential care settings;

10. Triage for emergency care based on individualised assessment not diagnosis/place of residence, consistent with the settlement reached by the US DHHS Office for Civil Rights with Pennsylvania