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Совет по правам человека
Пятьдесят первая сессия
12 сентября — 7 октября 2022 года
Пункт 3 повестки дня
Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Посещение Финляндии

Доклад Независимого эксперта по вопросу об осуществлении пожилыми людьми всех прав человека Клаудии Малер* **

Резюме

Секретариат имеет честь препроводить Совету по правам человека доклад Независимого эксперта по вопросу об осуществлении пожилыми людьми всех прав человека Клаудии Малер о ее посещении Финляндии, состоявшемся 26 октября — 4 ноября 2021 года. Цель посещения состояла в выявлении передовой практики и пробелов в осуществлении действующих законов и политики, касающихся поощрения и защиты прав человека пожилых людей. На основе информации, собранной до, во время и после посещения, Независимый эксперт анализирует проблемы, с которыми сталкиваются пожилые люди в осуществлении всех прав человека, уделяя особое внимание маргинализованным лицам и группам, находящимся в уязвимом положении. В своем докладе Независимый эксперт оценивает, насколько это возможно, осуществление действующих международных договоров, законов и политики, касающихся осуществления всех прав человека пожилых людей в Финляндии.

* Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

** Настоящий документ был представлен после согласованного срока в связи с техническим надзором в процессе его представления.

Просьба отправить на вторичную переработку

Annex

Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler, on her visit to Finland

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I. Introduction

1. Pursuant to Human Rights Council resolution 42/12, the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler, conducted an official country visit to Finland from 26 October to 4 November 2021, at the invitation of the Government. The purpose of the visit was to identify good practices and gaps in the implementation of existing laws and policies relating to the promotion and protection of the human rights of older persons in the country.

2. During her visit, the Independent Expert held meetings with numerous central, regional and local government authorities, including the Minister for Foreign Affairs, representatives of the Ministry of Social Affairs and Health, including the Minister of Social Affairs and Health, the Minister of Family Affairs and Social Services, representatives of the Ministry of Justice, representatives of the Ministry of the Environment, the former President of Finland Tarja Halonen, representatives of the Finnish Institute for Welfare and Health, the National Supervisory Authority for Welfare and Health, the Regional State Administrative Agency for Southern Finland and the Association of Finnish Local and Regional Authorities, the Deputy Parliamentary Ombudsman, Members of Parliament, representatives of non-governmental social welfare organizations, representatives of academia and universities, representatives of private companies and businesses, medical professionals, social workers and volunteers working with older persons. She visited a prison and held meetings with older persons and the organizations representing them in Helsinki and Imatra.

3. The Independent Expert expresses her sincere gratitude to the Government for its cooperation in ensuring the success of the visit. She is grateful to the Finnish National Human Rights Institution, in particular the Human Rights Centre, and other interlocutors for their availability and support. She looks forward to continued engagement with the Government and other stakeholders on the issue of older persons and on the implementation of her recommendations. She also expresses her gratitude to the Office of the United Nations High Commissioner for Human Rights and its Special Procedures Branch for their support in the preparation and execution of the visit.

II. Background and context

4. Since 1981, the number of persons aged 65 and over in Finland has nearly doubled. While the population aged under 65 is expected to steadily decline, the share of persons aged over 65 will increase, from 22 per cent to 26 per cent of the total population by 2030 and to 29 per cent by 2060. In 2020, the number of persons aged over 100 exceeded 1,000. By 2065, the number of persons aged 75 and older is projected to exceed 1 million. With a life expectancy of 79 years for men and 84 years for women,[1] Finland has one of the oldest populations in Europe.[2]

5. At the time of the visit of the Independent Expert, the National Action Plan on Fundamental and Human Rights 2020–2023 was being implemented. As part of the development of human rights indicators, older persons were mentioned in relation to self-determination in residential health-care and social welfare services. There were ongoing reforms of health-care and social services to increase the number of health-care personnel in long-term care units and expedite the delivery of social and health-care services to older persons. A change in the administrative structure was being implemented to shift the delivery of social and health-care services from the municipalities to the districts in order to streamline it.

6. During the emergency phase of the coronavirus disease (COVID-19) pandemic, the Government of Finland implemented various guidelines containing recommendations, many of which targeted older persons, to prevent the spread of the virus at the national and local

[1] Finland, Ministry for Foreign Affairs, Department for Communications, “Shine with facts about Finland”, June 2021.

[2] For general data on older persons in Finland, see HelpAge International, “AgeWatch report card: Finland”.

levels. As noted in its follow-up report for the period 2018–2022 on the implementation of the Madrid International Plan of Action on Ageing, Finland fared well by international standards, with relatively few people contracting or dying as a result of COVID-19 and with no excess mortality compared with the same time period under normal conditions. This indicates that, generally, the policies, guidelines and recommendations in the national strategy were appropriate. The Independent Expert indicates, in the present report, guidelines and areas that were in compliance with human rights norms in relation to older persons and areas that would benefit from further attention in the context of the COVID-19 pandemic.

III. Administrative, legal, institutional and policy framework

7. With the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Finland is party to most international human rights treaties. Finland signed the International Convention for the Protection of All Persons from Enforced Disappearance in February 2007 and submitted it to Parliament for consideration on 2 June 2022. In terms of International Labour Organization instruments that are relevant to the human rights of older persons, Finland has ratified the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), the Nursing Personnel Convention, 1977 (No. 149), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and the Domestic Workers Convention, 2011 (No. 189). At the regional level, in 2002, Finland ratified the European Social Charter (Revised), article 23 of which guarantees the right of older persons to social protection, and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, which enables national non-governmental organizations to submit collective complaints.

8. Under the Constitution of Finland, human dignity is a basic value that is inviolable. The Constitution guarantees adequate social security, including adequate old-age care. Under section 19, it provides that those who are unable to obtain the means necessary for a life of dignity have the right to receive subsistence and care, with adequate housing and support for independent housing as well as the provision of adequate social and health services. The public authorities guarantee the observance of fundamental and human rights.

9. The Finnish National Human Rights Institution, an independent national human rights institution with status A accreditation under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) since 2014, comprises the Human Rights Centre, the Human Rights Delegation and the Office of the Parliamentary Ombudsman. The Institution also acts as the monitoring body for the implementation of the Convention on the Rights of Persons with Disabilities, to which Finland has been a party since 2016.

10. The mandate of the Human Rights Centre is to promote the implementation of fundamental and human rights, including through human rights training and education. The Human Rights Delegation is a cooperative body that broadly represents Finnish human rights actors working together to ensure information flow in the field of human rights. The Office of the Parliamentary Ombudsman has the mandate to examine individual complaints, the jurisdiction to inspect residential units, oversight of the supervisory mechanism for the provision of services for older persons and the possibility to propose improvements to legislation governing the rights of older persons. In 2019, the Parliament granted funding for additional staff in the Office of the Parliamentary Ombudsman and to the Human Rights Centre for their work on promoting and monitoring the rights of older persons.[3]

11. Following the publication of government reports on ageing, and one year after a scandal in relation to State-run and private care homes,[4] in 2020, Finland adopted the cross-government National Programme on Ageing 2030. The thematic areas contained in the

[3] For examples of the work of the Centre related to older persons, see Human Rights Centre, "Annual report 2019" (Helsinki, 2020).

[4] See, for example, Anne Kauranen, "Care home scandal nudges Finland's voters back toward Social Democrats", Reuters, 8 April 2019; and YLE News, "Embattled CEO of elder care home quits over negligence reports", 29 January 2019.

programme address safeguarding the functional capacity of the ageing population, including by ensuring the functional capacity and work ability of older workers, using technology to improve the well-being of older persons and strengthening the role of volunteer work, age-friendly housing and living environments, as well as customer-oriented services. The programme outlines measures for both the current government term (2020–2023) and the next government term (2023–2030).

12. During the period 2020–2022, through the Housing Finance and Development Centre of Finland, the Ministry of Environment provided grants amounting to about 70 million euros for persons over the age of 65 to improve the accessibility of their homes, build retrofitted lifts and improve accessibility in common areas of residential buildings. In line with the ageing policy of Finland, the grants support older persons in living longer at home, which is the target of the National Programme on Ageing 2030.

13. In Finland, municipal social welfare and health-care services, implemented with government support, form the basis of the social welfare and health-care system. A wide range of social welfare and health-care services are available, both free of charge and for a fee. Municipalities are responsible for organizing social welfare and health care, which can be provided alone or jointly with other municipalities, from the voluntary sector or purchased from other municipalities or from the private sector.

14. The Social Welfare Act and the Health Care Act refer to the provision of services that apply to all residents, regardless of age. Other laws relevant to older persons include the Act on Support for Informal Care, the Act on the Status and Rights of Social Welfare Clients, the Act on the Status and Rights of Patients and the Family Carer Act. Numerous laws such as the Mental Health Act and the Act on Special Care for Persons with Intellectual Disabilities can be relevant to some older persons on the basis of lower income, assets and level of disability.

15. Regional state administrative agencies guide and monitor municipal and private social welfare and health-care services and evaluate the availability and quality of the basic services provided by municipalities. Private service providers acting in more than one regional state administrative agency are governed by the National Supervisory Authority for Welfare and Health, which acts as the licensing and supervisory authority.

16. The Act on Supporting the Functional Capacity of the Older Population and on Social and Health-Care Services for Older Persons, which came into force in 2013, contains provisions related to social and health-care services for older persons and sets out the obligations of the municipalities in terms of the supervision, organization, accessibility, transparency and financing of such services.

17. Non-governmental organizations play an important role in promoting active ageing for older persons and contribute to the implementation of mental health, well-being and social inclusion programmes, in collaboration with municipalities, ministries and the Finnish Institute for Health and Welfare. Since 2004, programmes such as the Strength in Old Age programme have benefited 14,193 adults aged over 75 with decreased functional capacity living independently, as well as volunteers over the age of 60. Out of the more than 300 municipalities in Finland, 170 municipalities, including Imatra, have participated in a three-year fitness and mentoring programme.

IV. Independent Expert’s main findings

A. Discrimination

18. In Finland, the two parallel and independent ombudsman functions are carried out by the Chancellor of Justice, appointed by the Government, and the Parliamentary Ombudsman, elected by the Parliament. Both the Chancellor of Justice and the Parliamentary Ombudsman supervise the legality of the Government’s actions. The Parliamentary Ombudsman also monitors closed institutions, such as prisons and mental health institutions, and forms part of the Finnish National Human Rights Institution.

19. The Chancellor of Justice and the Parliamentary Ombudsman can go on monitoring visits, either in response to citizen complaints or at their own instigation, and can provide guidelines and recommendations. They may also propose compensation or issue reprimands to public authorities. Ombudsman functions are also exercised by the Non-Discrimination Ombudsman, the Ombudsman for Children and the Ombudsman for Gender Equality, whose competencies are based on legislation linked to their respective mandates.

20. In 2020, the Parliamentary Ombudsman received over 7,000 complaints,[5] including some related to age discrimination. While employment-related age discrimination cases can be referred to the Non-Discrimination Ombudsman,[6] individual cases related to workplace discrimination are monitored by the health and safety authorities under the regional state administrative agencies. In most of the complaints received by the Parliamentary Ombudsman, ageism was mentioned only superficially in the context of general prejudice towards older persons.

21. The Non-Discrimination Act contains regulations on promoting equal opportunities and prohibiting discrimination on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The majority of cases relating to and complaints by older persons referred to the Non-Discrimination Ombudsman concern online banking services, health care, school transport, housing and harassment in the workplace. Discrimination in social welfare and health-care services and housing concerned the lack of availability of services in the Sami languages, in particular in areas that affect older Sami people, including physician services, health centres with inpatient wards, mental health services and institutional and sheltered housing services for older persons.

22. During the early stages of the COVID-19 pandemic, the Deputy Ombudsman noted that advice from the Ministry of Social Affairs and Health to avoid contact, as far as possible, with people over the age of 70 did not constitute age discrimination.

B. Intersectionality

23. Older persons constitute a very diverse group. For older Sami people, for example, aspects of their cultural life such as cooking with local ingredients and taking frequent walks in nature are important. Providing culturally sensitive care to older persons, including the possibility of communicating in Sami languages within the health-care and social systems, is vital. Cultural diversity training for nurses would be a starting point to provide culturally appropriate services for older Sami people. The role of language is emphasized in services that are based on linguistic interaction, which highlights the importance of medical and support staff having knowledge of Sami languages and culture. As indicated by the Head of SamiSoster, a member of the Central Saami Association, which is part of the Saami Council, part of well-being is about accepting others. It is important for the Sami to be culturally accepted. It is safe to talk about difficult things when people know that they will be understood.

24. Similar issues were found with other ethnic minorities, including the Roma community in Finland, highlighting the importance of cultural awareness and communication, in particular with older Roma people, in the Roma language. The Roma population of Finland is between 10,000 and 12,000 persons. According to the Non-Discrimination Ombudsman, Roma communities in Finland experience discrimination in terms of obtaining housing and face ethnic profiling by public and private security forces, including police and security officers.

25. Weak socioeconomic status owing to a lower level of education, coupled with higher poverty and unemployment rates, increases the dependency of the Finnish Roma on State-subsidized rental housing and also leads to higher morbidity and mortality rates. Members of

[5] Parliamentary Ombudsman of Finland, *Summary of the Annual Report 2020* (2021), p. 37. Available at www.oikeusasiamies.fi/documents/20184/39006/summary2020/2de02ec5-378a-4cf3-8948-89f346b2be3a.

[6] Finland, *The Report of the Non-Discrimination Ombudsman to the Parliament* (2018), p. 44.

the Roma population often find the available health services to be inadequate. For example, older Roma women, many of whom have worked in physically demanding jobs, may require more physiotherapy services than older women from other population groups. However, a lack of information on the availability of such services and how to apply for them can be barriers to them receiving the care they need. Older Roma people experience discrimination in accessing social and health-care services, often as a result of a lack of cultural sensitivity and information about the Finnish Roma culture and habits, such as not being able to refer to specific body parts. They therefore prefer to receive treatment from medical professionals with an understanding of Roma culture.

26. Older persons from other minority and ethnic backgrounds, including older migrants, face additional challenges in terms of language barriers and difficulties in accessing both health-care and social services. Rapid digitalization has also proved a barrier. Data disaggregated by ethnicity or minority background are seldom collected and services for older persons are seldom tailored to their specific needs. Often, organizations and associations working with older persons from minority or ethnic backgrounds focus on integration, rather than providing support for the realization of their human rights and inclusion. Intersectional factors should always be taken into account when looking at the human rights issues of older persons, as inequalities are aggravated in later life.

C. Violence, abuse, maltreatment and neglect

27. Elder abuse remains a taboo, and specific issues related to older women are not specifically taken into account in discussions related to domestic violence or violence against women. While the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence seems to be well implemented, the Independent Expert was informed that it does not seem to be used to tackle issues related to violence against older women.

28. Non-governmental organizations such as Suvanto – for a Safe Old Age Association and VoiVa – Empowering Old Age Coop focus on the prevention of violence against and abuse of older persons. They raise awareness of elder abuse and the prevention of gender-based violence through campaigns, including on the prevention of financial abuse, peer-support programmes and training. They also provide support to older victims of abuse, neglect and domestic violence through a national telephone hotline. Individual support and legal advice are provided, in addition to adult education and training for social-care and health-care professionals.

29. The National Supervisory Authority for Welfare and Health studies the prevalence of abuse in units providing residential care. In a 2016 survey on abuse by employees working in units providing 24-hour care for older persons, most respondents had witnessed some type of abuse towards an older person. The results of the survey showed that time pressure, a shortage of staff and larger-sized units increased the risk of abuse. Prompt, assertive action by managers made it easier to report abuse and an open atmosphere that fostered discussions about what constituted abuse helped to prevent its reoccurrence. Shortcomings were noticed in recognizing and assessing risks and intervening in situations of abuse either by staff or by residents towards other residents.

D. Social protection and the right to social security and work

30. The Finnish system is based on two pension schemes: an earnings-related pension scheme and a national pension. The national pension includes various types of benefits paid to persons with a low income, including persons with disabilities, and early retirement pensions. Persons who have resided in Finland for at least three years, regardless of their legal status, are entitled to the national pension.[7]

[7] For more information, see Info Norden, “The Finnish pension system”. Available at www.norden.org/en/info-norden/finnish-pension-system.

31. In terms of social protection and social security, older women continue to be disadvantaged: they receive a smaller pension, on average, than men of the same age, which is in part a result of the pension gender gap. Despite a slight reduction, of 2.2 per cent, from 2002 to 2018, older women's pensions are on average one third smaller than older men's pensions.[8] Older women traditionally continue to be the main providers of care, which can be unpaid, and many women work in the social sector, which offers lower financial compensation than the technical and industrial sectors, in which men remain overrepresented. The reform of childcare leave to limit the transfer of parental leave could reduce the pension gap, which has an impact on the overall pension and tends to disproportionally affect women.

32. The Committee on Economic, Social and Cultural Rights has raised the situation of people aged 65 and over in Finland with an income below 40 per cent of the median equivalized income. The Committee has also held that the minimum levels of the basic social assistance and of the sickness and old-age benefits in the country are inadequate.[9] Poverty among pensioners is most prevalent in single-person households and among women aged over 75. Among persons aged over 75, the at-risk-of-poverty rate was over 21 per cent in 2020.[10] While pension schemes in Finland are comprehensive, older persons are at a higher risk of falling below the poverty line.

E. Digitalization

33. Older women are generally more likely to suffer from digital exclusion than older men, with large disparities between rural and urban areas. There continues to be an urgent need for alternatives to online services or regulations to institutionalize support with regard to digital services.

34. Studies show that, while the percentage of older persons using online services is increasing, albeit slowly, accessibility issues remain. Some older persons are not digitally literate owing to a lack of guidance and training or an inability to keep up with fast-changing technology, including electronic authentication for banking. Guidance in easy-to-read language would help to increase digital literacy among older persons, in particular those whose first language is not Finnish, such as older migrants.

35. During the initial stages of the COVID-19 pandemic, physical-distancing measures resulted in the loss of regular information networks for many older persons, leading to increased social exclusion and loneliness. The increased provision of information and services online made the digital divide even more obvious. Many older persons who relied on digital devices located in and support from public libraries were unable to access them as a result of closures during the pandemic. This caused significant limitations for older persons who required additional support to use the Internet, as well as for those who lacked electronic devices of their own and digital connectivity at their home.

F. Education, training and lifelong learning

36. During her visit to Imatra, the Independent Expert learned about lifelong learning courses offered to older persons, both remotely and in person, as well as night courses. Information regarding such courses was provided both online and in print format; 60 per cent of the courses offered were financed by the municipality. Courses included language courses in Swedish, the other official language in Finland, and in English and Russian, among others. Students were mainly older women and older persons belonging to ethnic minorities. The Independent Expert noted the importance of community centres, not only as places for learning but also as places to meet and socialize, which are key aspects of active ageing.

37. The Independent Expert was pleased to learn that assistance to sign up for the courses was provided in person, if required. During the initial phases of the COVID-19 pandemic and lockdowns, libraries, including in Imatra, were unable to provide support for online activities

[8] https://tutkimusblogi.kela.fi/arkisto/5130 (in Finnish).
[9] E/C.12/FIN/CO/6, para. 20.
[10] European Anti-Poverty Network, "Poverty Watch report: Finland 2020".

and tasks. The lack of such support and digital devices disproportionately affected older persons who were prevented and later discouraged from physically accessing banking and other services during that period.

G. Care

38. During her visit, the Independent Expert visited different care facilities, including community day centres, nursing homes and sheltered housing in which 24-hour assistance and, in some cases, even medical assistance were provided. Some of the facilities were privately run and others were community based.

39. From 1990 to 2015, there was a sharp decrease in the use of local authority-funded care services for those over the age of 75, partly as a result of changes brought about by a major recession in the 1990s.[11] However, the increased focus on policies of ageing at home did not come with major policy changes or increased funding for home care.

40. Intensive sheltered housing is designed for older persons who need 24-hour care. Half of such housing in Finland is operated by private companies. Institutional care must be justified on medical grounds or following an assessment that the person would no longer be able to live comfortably at home, despite receiving support through home care. Both intensive full-service housing and institutional care cater to older persons in need of substantial social and health-care support.[12]

41. As of 2021, provisions on client charges for long-term housing services were included in the Act on Client Charges in Healthcare and Social Welfare to guarantee uniformity in the fees related to home-care services and long-term housing. The limit on fees for home care-related costs is 35 per cent above the minimum income, depending on individual status. For example, the minimum income for someone living alone was 588 euros in 2022. The Independent Expert believes that it is important to provide services to all older persons and that setting a limit on fees on the basis of earnings can make such services available to older persons with limited financial resources.

42. Adult foster care, which is regulated by the Family Carer Act, is an option between living at home and living in sheltered housing. The municipality enters into an agreement with the foster carer and is responsible for the carer's pension contribution and accident insurance. Care is provided in the home of either the foster carer or the older person. By 2018, the use of foster care had increased tenfold compared with 2010, when only 15 out of 342 municipalities offered such a service. The Act regulates the minimum remuneration for care, compensation for expenses and days off but, as the agreement is not an employment contract with the municipality, the social security situation of foster carers is weaker than that of social workers and the Working Hours Act does not apply to foster carers.[13]

43. The Act on Supporting the Functional Capacity of the Older Population and on Social and Health-Care Services for Older Persons stipulates that an older person must receive necessary social and health-care services within a maximum deadline of three months and obliges health- and social-care professionals to notify the authorities responsible for providing such services. The Act sets out the different models of care available in Finland, which are mainly home care, intensive full-service housing and long-term institutional care. Section 14 of the Act covers care in private homes. The Act also stipulates that care units must draw up a self-monitoring plan, update it regularly and keep it on public display.

[11] Teppo Kröger, "Looking for the easy way out: demographic panic and the twists and turns of long-term care policy in Finland" in *Aging Welfare and Social Policy: China and the Nordic Countries in Comparative Perspective*, Tian-kui Jing and others, eds., 2019, International Perspectives on Aging No. 20 (Springer, 2019).

[12] See Katja Karjalianen and Anna Mäki-Petäjä-Leinonen, "Long-term elderly care, family and money in ageing Finland", in *Solidarity Across Generations, Comparative Law Perspectives*, Eri Kasagi, ed. (Springer, 2020).

[13] See Raija Leinonen and Maria Kuukkanen, "Adult foster care of older people", *International Journal of Care and Caring*, vol. 4, No. 3 (August 2020).

44. As monitoring mechanisms, including for institutions, were in many instances reduced or at a standstill during the COVID-19 pandemic, older persons' human rights were at stake. The Deputy Parliamentary Ombudsman recalled incidents that included the prevention of a married couple from living together and the prohibition of close relatives from attending a funeral owing to a misunderstanding over the centre's rights and legal obligations during the emergency phase of the pandemic.

45. Despite their intention, measures to protect older persons in the initial phase of the pandemic sometimes resulted in the restriction of their human rights. The Deputy Parliamentary Ombudsman clarified that, under the Communicable Diseases Act, visits to housing units, including in care institutions, could not be lawfully prohibited or restricted other than in situations of quarantine.

46. While the Act on Supporting the Functional Capacity of the Older Population and on Social and Health-Care Services for Older Persons does not stipulate an age at which a person is considered old, it defines an older person as a person whose physical, cognitive, mental or social functional capacity is impaired due to illnesses or injuries that have begun, increased or worsened with high age or due to degeneration related to high age. Section 14 of the Act sets out the responsibility of municipalities to provide long-term care in the form of institutional care only if there are medical grounds for doing so or if justified to ensure a dignified life and safe care.

47. The Independent Expert learned that older persons, including those with cognitive impairments, including dementia, do not qualify for personal assistance under the Act on Disability Services. To qualify for personal assistance under the Act, support must be required owing to a long-term or progressive illness that is not related to old age. Older persons with dementia or other forms of intellectual or psychosocial disabilities and cognitive impairments are based in specific units and the Independent Expert witnessed that, in many places, the doors were locked with digital locks and the older persons could not leave the unit or enter the garden when they wanted. During her visit, the Independent Expert learned that some care units were aware that this constituted a violation of the human right to freedom of movement, but she was informed that the system was in place owing to an insufficient number of staff.

H. Right to self-determination and restrictive measures

48. Older persons should have the right to choose their health and social services, rehabilitation, home care and long-term care and to be in charge of their care arrangements, in line with a person-centred approach. However, legislation on promoting the right to self-determination in health and social services is limited. Legal provisions on older persons' right to choose are laid out in the Act on the Status and Rights of Social Welfare Clients (sects. 5, 8 and 9) and the Act on the Status and Rights of Patients (sect. 6).

49. The legislation on health care and social welfare contains very few provisions on restricting the right to self-determination or restricting fundamental rights in general. Provisions on restrictive measures can be found only in the Mental Health Act, the Act on Welfare for Substance Abusers, the Act on Special Care for People with Intellectual Disabilities and the Communicable Diseases Act. However, there are currently no specific provisions on restrictive measures regarding health-care and social services for older persons.

50. Under the Constitution of Finland, restrictive measures must be based on an act that is sufficiently precise and contains appropriate legal remedies. Fundamental rights can only be restricted on the basis of an act enacted by Parliament, with limited and well-defined parameters and in compliance with the principle of proportionality. Restrictions must not conflict with the country's international human rights obligations and sufficient legal remedies should be provided in case of restrictions of fundamental rights.[14] The legislation on social welfare does not contain legal provisions on restricting the freedom of movement, the right to self-determination or other fundamental rights of older persons.

[14] www.eduskunta.fi/FI/vaski/Mietinto/Documents/pevm_25+1994.pdf (in Finnish).

51. Restrictive measures can include physical restraints such as straps and bindings to restrain a person in a bed or a chair, as well as wheelchair brakes, geriatric chairs and trays, raised bedrails and locked doors. Sedatives and digital monitoring systems may sometimes be used for restriction purposes.[15] Restricting fundamental and human rights in long-term care constitutes elder abuse and a human rights violation that continues to occur in Finland.

52. In 2008, the Parliamentary Ombudsman outlined policies on physical restrictions in residential care. Such measures are justified in exceptional situations in the Criminal Code on the basis of necessity or self-defence. Section 8 of the Act on the Status and Rights of Patients permits the administration of life-saving emergency medical treatment without a patient's consent for reasons including lack of consciousness. Alternative procedures must be considered if the medical procedures required cannot be carried out or if their implementation would cause undue suffering. According to the Act on the Status and Rights of Patients, restrictive measures, if used, must be part of the care plan and recorded in the medical documents by the physician responsible for the patient's care.

53. Legislation regulating preconditions for restrictive measures, which would strengthen the right to self-determination of older persons, is currently lacking in Finland. Health-care units should have a plan to prevent the use of restrictions, which should never be applied to a greater extent or longer than necessary, nor used as a preventive measure to compensate for an insufficient number of staff, which was a concern expressed to the Independent Expert. A draft law on social and health services is currently being discussed, which would raise the ratio of staff to patients in long-term care facilities.

54. Restrictive measures are often targeted at older persons suffering from intellectual and/or psychosocial disabilities and cognitive impairments. When a conflict between an individual's right to self-determination and safety arises, the Independent Expert recommends the use of alternative measures to best implement the human rights of older persons, without the use of restrictive measures.

I. Differential treatment between older persons and persons with disabilities

55. Justifications for the different treatments applied to older persons who acquire a disability in later life and for persons with a disability as they age were unclear. The legal applications and measures for older persons with disabilities, who are disproportionately represented among persons with disabilities, seem to be covered under different protection systems, linked to a service-oriented regime rather than to rights based on the Convention on the Rights of Persons with Disabilities. While most persons with dementia are part of the older population in Finland, dementia is not always viewed as a disability, but as an age-related issue. As a result, persons with dementia do not receive the relevant extensive services provided for under the Disability Services Act.

56. The Independent Expert received information about the review of the Disability Services Act, which, if adopted by Parliament in 2022, would come into effect in 2023. Key proposals in the current draft[16] include better integration of persons with disabilities into all phases of the process to determine the services to which they would be entitled, harmonization of the services provided for under the Act with those offered under the Intellectual Disability Services Act, the provision of new services and the inclusion of persons with respiratory paralysis.

57. Under the current Disability Services Act, anyone with a severe disability has the right to specific services that differ depending on the type of service, in line with the social model applied, as well as the level of functioning. Older persons are excluded from one of the services, personal assistance, as the entitlement does not cover persons whose illnesses or disabilities are related mainly to ageing. Despite this exception, older persons have qualified

[15] C. Gastmans and K. Milisen, "Use of physical restraint in nursing homes: clinical-ethical considerations", *Journal of Medical Ethics*, vol. 32, No. 3 (March 2006).

[16] www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=35d25a9b-5196-494e-87c4-6841101b5901 (in Finnish).

for personal assistance under the Disability Services Act. While the largest group of recipients of personal assistance are persons with disabilities of working age, one third of all persons with disabilities who receive such services are over the age of 65 and represent the fastest-growing group. This points to a gap in services for older persons who currently lack adequate services under other acts, including the Social Services Act.

58. In the proposed disability services act, persons considered to have ageing-related illnesses or disabilities would be excluded from the scope of application. Even though there is no age limit in the proposal, the expense calculations in the draft law are based on the assumption that people over 65 would not be entitled to services; 65 would therefore become the de facto age limit. If approved, older persons would no longer have the right to services that they currently qualify for, including housing accessibility modifications. While some services offered under the Social Services Act are similar (such as transport services), they are often not as comprehensive and require payment of a fee. Unlike rights accorded under the Convention on the Rights of Persons with Disabilities, these are not subjective rights.

59. The ageing exclusion in the proposed disability services act is not meant to apply to persons with disabilities who have become older. However, any request for additional assistance would be evaluated to ascertain whether the request may be due to ageing and denied if a correlation between the need and ageing is determined. The rights of older persons with disabilities would therefore be weakened with the proposed age caveat. This "old age" exemption would qualify as ageist and would be considered age discrimination. Other examples of age discrimination in the provision of health-care services can be found in the age limit of 67 for rehabilitation services[17] and 65 for specialized acute rehabilitation services for stroke victims.

V. Conclusion and recommendations

A. Conclusion

60. **The Independent Expert is encouraged by the continued work of the long-standing monitoring mechanisms of the various ombudspersons in Finland. She welcomes the addition of a newly established Ombudsman for Older Persons to continue to raise awareness of the human rights of older persons. She is encouraged that the Finnish National Human Rights Institution, which includes the Human Rights Centre, the Human Rights Delegation and the Office of the Parliamentary Ombudsman, already focuses on monitoring the human rights of older persons.**

61. **Finland has a comprehensive social protection system, with care and social services currently undergoing a big reform. The goals for the future should be the inclusion of all older persons in specific measures and a person-centred approach. The Independent Expert commends Finland for its considerable efforts to include older persons in society and to provide them with health-care and social services in line with the obligation of deinstitutionalization. She hopes that her visit and report will assist the country in continuing to advance towards the establishment of a truly inclusive and age-friendly society.**

62. **The health-care and social services provided by the municipalities and districts seem to differ considerably depending on the region and the setting (such as home-care services, institutions or other care arrangements). Any change made during the reform needs to have a person-centred approach in line with the human rights-based approach that looks at the diversity of individuals and provides multiple options from which to choose the most appropriate care, on the basis of an individual's fully informed consent and choice. A positive aspect of the welfare and care system includes the monitoring mechanisms that are already in place, including the National Supervisory Authority for Welfare and Health and the regional state administrative agencies.**

[17] www.finlex.fi/fi/laki/ajantasa/2005/20050566?search[type]=pika&search[pika]=kuntoutusraha (in Finnish).

63. **The State's commitment to the human rights of older persons needs to be reflected in everyday practice. With the reform, the Government has the opportunity to adjust the legislation in the areas of legal capacity, health, and social care and embrace the paradigm shift to see older persons as rights holders. The Independent Expert encourages Finland to act as a human rights champion globally, including by advocating and applying a human rights-based approach in relation to older persons. Consideration of older age or a life cycle approach should be mainstreamed into all human rights themes, including those relating to women, violence against women, refugees and internally displaced persons, disabilities, business and human rights. Older persons' enjoyment of their human rights should be part of the development cooperation priority areas of Finland.**

64. **There is a need to provide legal safeguards for services for older persons, including provisions on promoting the right to self-determination and on restrictive measures regarding health-care and social services for older persons, such as those found in the Act on Special Care for People with Intellectual Disabilities and the Mental Health Act.**

B. Recommendations

65. **The Independent Expert recommends that Finland ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as the conventions of the International Labour Organization that are relevant to older persons, including the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169). She congratulates the Government of Finland on the progress so far but would recommend increasing the budget of and support for the various monitoring mechanisms, especially the Finnish National Human Rights Institution, to strengthen monitoring and raise awareness of the human rights of older persons in different settings. This would ensure the application of more comprehensive, evidence-based guidance to better implement human rights for older persons and ensure their full enjoyment thereof.**

1. Data

66. **One of the issues stressed in the Independent Expert's reports, which was also pointed out in the former Independent Expert's country visit and thematic reports, is the importance of providing disaggregated data to inform, design and monitor adequate rights-based policies and responses for older persons from different ethnic backgrounds. While the Independent Expert welcomes the efforts of the Finnish Institute for Health and Welfare to compile data disaggregated by age and gender, in some cases, for example in statistics related to prisons, those aged 65 and over are regarded as one homogeneous age group, despite the increase in life expectancy owing to improved health care and other factors.**

67. **Another area of improvement is related to the collection of disaggregated data related to older persons from a migrant or indigenous background. The Independent Expert was informed that the lack of data disaggregated by ethnicity was to safeguard identities and that all Finnish residents were equal regardless of their ethnicities.**

68. **While it is commendable that the social protection system of Finland is inclusive of all its residents, regardless of their legal or ethnic status, disaggregated data can inform programmes that can be later tailored to those most in need, including specific vulnerable groups that may otherwise not be reached. This is in line with the concluding observation issued by the Committee on the Elimination of Racial Discrimination on the twentieth to twenty-second periodic reports of Finland.**[18]

69. **Furthermore, with regard to elder abuse, all forms of violence, abuse and neglect should be taken into account in statistics. In terms of violence against women, the**

[18] CERD/C/FIN/CO/20-22, para. 7.

Independent Expert stresses the need to include data on older women disaggregated by age as well as other factors, such as indigenous, migrant, minority or other background. Only with sufficient bases of data can the Government implement meaningful measures.

2. Ageism and age-discrimination

70. **The Independent Expert urges the Government of Finland to review its new laws, strategies and action plans, in particular as they relate to older persons, with a view to ensuring that ageism and ageist practices are not perpetuated or tolerated. Furthermore, taking into account the diversity of the age group would be a benefit to society. Intergenerational approaches should be strengthened, recognizing that younger generations are future generations of older persons. Recognizing the need for human rights protection during the life course is relevant to persons of all ages because access to human rights in older age ensures dignified ageing in an inclusive society.**

71. **The Independent Expert recommends that Finland consider increasing the scope of the Non-Discrimination Ombudsman beyond promoting equality to examining cases of workplace and employment discrimination, including on the basis of age.**

72. T**he Independent Expert encourages the Government to review the remedies available to ensure that they trigger a change in the mindset of people who discriminate against older persons, including those with injunctive powers, and to ensure that they can deal effectively with cases of multiple discrimination.**

73. **The Independent Expert recommends that the provision of health-care and social services for older persons with disabilities should be based on rights set out under the Convention on the Rights of Persons with Disabilities. The legal applications and measures currently applied to older persons with disabilities seem to be covered under different protection systems, resulting in older persons not receiving services that are set out under the Disability Services Act. In line with the Convention, persons with intellectual and/or psychosocial disabilities, including cognitive impairments such as dementia, should have the right to personal assistance.**

74. **The Independent Expert strongly recommends that the Government revise the definition of an older person as a person whose physical, cognitive, mental or social functional capacity is impaired due to illnesses or injuries that have begun, increased or worsened with high age or due to degeneration related to high age. Including an old-age exclusion in the revised Disability Services Act will further limit older persons from receiving transportation services under the Act.**

3. Discrimination and intersectionality

75. **The provision of services should take into account specific needs of older persons, especially those with lesbian, gay, bisexual, transgender and intersex, indigenous or ethnic backgrounds, to provide them with culturally sensitive health-care and social services. Older lesbian, gay, bisexual, transgender and intersex persons, who are one of the most vulnerable groups, receive insufficient services and have poor health outcomes. They are also one of the most invisible groups in old age owing to social stigma and are largely ignored by national laws and policies and by society at large. They may experience multiple forms of discrimination owing to the stigma linked to their sexual orientation, gender identity and sex characteristics.**

76. A **lack of information on the availability of health-care and social services and how to apply for them creates barriers for older women and members of linguistic, religious and ethnic minorities, as well as refugees and migrants. Training for health-care and social services professionals on human rights and cultural sensitivity should be required. The Government should consider increasing funding for culturally sensitive training for such professionals.**

77. **Discrimination on the basis of language and ethnic and indigenous origin is aggravated for older persons. Designing appropriate and culturally sensitive services for persons with dementia with a mother tongue other than Finnish should take into**

consideration that, in older age, persons with dementia may revert to their original language and lose their previous ability to communicate in another language.

78. **The Independent Expert recommends that the Government increase the number of health-care professionals who are native in one of the three Sami languages and that it provide cultural training to non-Sami health-care personnel working with older Sami people, in particular those with cognitive impairments, including dementia.**

79. **There is also a need to develop and safeguard low-threshold services in Sami languages that support mental well-being and mental health for the older Sami population. Availability and accessibility should also be safeguarded in the Sami homeland. To develop such services, Sami-speaking professional staff with an understanding of the Sami culture are needed.**

80. **Attention must be paid, in health-care and social services, to the community-based practices characteristic of the Sami indigenous people. In line with the recommendations on mental health care contained in the concluding observations of the Committee on Economic, Social and Cultural Rights on the seventh periodic report of Finland,[19] practices, in particular community care, that support the whole Sami community must be developed. Community centres with health-care and social welfare professionals familiar with the Sami culture are increasingly important for older Sami people who wish to continue their traditional reindeer-herding lifestyles, in particular given the increasing migration of younger Sami people to urban centres.**

4. Violence and abuse

81. **Violence against and abuse of older persons are frequently committed, including by family members and those who care for older persons, and are often underreported. The Independent Expert emphasizes the importance of dissemination of information to older persons about their rights, which could help to counter this trend.**

82. **National preventive information campaigns on violence, abuse and neglect of older persons should include the possibility for older victims to speak with caseworkers for referrals to legal, medical and psychological help, and shelters. Within the care sector, the Independent Expert encourages continued attention to uncover and identify elder abuse, including campaigns on the human right of older persons to live free from abuse**.

83. **Training programmes to recognize elder abuse, including within families, and provide age-specific support to older victims of abuse, neglect and domestic violence should be developed and implemented for members of law enforcement entities, the police, regulatory authorities, judges, lawyers and prosecutors. Public information campaigns should convey that violence and abuse against older persons are serious crimes and will be treated as such.**

5. Social protection and the right to social security and work

84. **The Independent Expert urges the Government to address old-age poverty and consider ways to alleviate poverty, in particular among older women, given that the proportion of older persons is expected to increase in the years to come. The Independent Expert encourages the Government to find ways to address the pension gender gap. Given that women are disproportionately represented as informal and foster carers, the Government should consider applying the social security of social workers to foster carers and applying the Working Hours Act to foster carers.**

85. **The Independent Expert calls upon the Government to ensure that older rural women engaged in unpaid work or in the informal sector have access to additional non-contributory social protection schemes, in line with Committee on the Elimination of Discrimination against Women general recommendation No. 16 (1991) on unpaid women workers in rural and urban family enterprises.**

[19] E/C.12/FIN/CO/7, paras. 43–45.

6. Digitalization, education and lifelong learning

86. **While educational programmes should not target older persons exclusively, as this could be limiting and contribute to social exclusion, the Independent Expert stresses that there is a need to ensure access to education and training in old age, taking into account specific interests and needs. A strategy of lifelong learning that adequately responds to the needs of older persons should be designed to enable them to cope with constantly changing circumstances, requirements and challenges, for their active participation in society and for an independent life continuing into old age. Detention centres should take into account the need for occupational and lifelong learning for older persons deprived of their liberty.**

87. **Acknowledging that libraries and community centres foster social inclusion and are an asset for society, the Independent Expert highlights the increasing need for places for older persons to meet, exchange ideas, learn and receive help with digital tools.**

88. **While the percentage of older persons using online services is growing, accessibility issues remain, including for older persons who are not digitally literate owing to a lack of guidance and training or an inability to keep up with fast and changing technology, including electronic authentication for banking. The Independent Expert stresses that there is an urgent need for alternatives to online services or regulations to institutionalize support with regard to digital services. Easy-to-read language is also needed for some older persons, in particular older migrants, older persons who are illiterate and older persons belonging to linguistic, religious or ethnic minorities, to ensure informed decision-making.**

7. Care

89. **The Independent Expert recommends that Finland continue to develop and fine-tune its long-term care policy, ensuring a human rights-based approach in the design and delivery of long-term care, taking into account input from older persons themselves at all stages. In line with the commitment to deinstitutionalization and the policy of providing the services necessary for older persons to live in their own homes for as long as they choose, the Independent Expert notes that, while the availability of long-term institutional care has decreased, the number of private facilities has increased. In this regard, the Independent Expert recommends the implementation of policies and funding that allow older persons who need support but do not have financial resources for private care homes to access services that, in the past, were provided in public long-term care homes and to choose the type of service they wish to have.**

90. **Regulations for home carers and limits on client charges have provided better protection for both persons caring for older persons and older persons who are able to purchase additional services, including the option to live in "sheltered" housing, managed by public authorities. To support older persons who wish to live at home, sufficient services must be provided to allow them to choose to live a life of dignity at home. This would mean providing the needed services and sufficient resources to that end.**

91. **The Independent Expert welcomes the commitment to deinstitutionalization and the development of community services for older persons. She recommends that alternative family accommodation or community-supported housing be part of the solutions to include older persons in the community to further independent living. Such alternative models could continue to be partly paid for by older persons themselves, if adequate legal protection is in place.**

92. **To better support the choices of older persons with limited financial resources, the Independent Expert recommends that social services such as home-care services be regulated and allocated within a framework and institutionalized in government budgets. Taking advantage of the current health-care and social services reform, the Independent Expert also recommends that sufficient resources be allocated to allow municipalities to increase social and community services to enable older persons to live independently in the community.**

93. **The Independent Expert stresses the need to ensure quality control in all settings such as health-care institutions, sheltered housing and other community services. Quality management and monitoring of care, including home care, with a focus on prevention of abuse and the management of such cases, need to be strengthened. The Independent Expert welcomes the requirements that care units draw up a self-monitoring plan, update it on the basis of feedback from older persons and those close to them, and keep it on public display. As internal controls alone are not sufficient to ensure quality of care, service providers should be required to publish self-monitoring guidelines online.**

94. **The Independent Expert expresses concern about the use of restrictions applied to a greater extent or longer than necessary or as a preventive measure to compensate for insufficient staff in health-care units. She states that the adoption of legislation regulating preconditions for restrictive measures, which is currently lacking in Finland, would strengthen the right to self-determination of older persons.**

8. Adequate standard of living

95. **The Independent Expert calls upon the Government to strengthen its efforts to combat poverty and social exclusion, paying particular attention to older persons living under the poverty line, including in urban centres.**

96. **An adequately resourced, comprehensive accessibility strategy and the promotion of universal design for all buildings, public services and public transport to ensure accessibility for older persons, including those with reduced mobility and with disabilities, are necessary to ensure inclusion for older persons in urban and rural areas.**

97. **A human rights-based approach should be applied to the design of public and private buildings, in conformity with human rights. Housing grants to provide support to older persons living at home need to be accessible to them, either through easy-to-access online applications or in print form, with the possibility of receiving in-person support to apply for such grants.**

98. **The Independent Expert notes that it is essential to foster the resilience of older persons, reduce their vulnerability and ensure that they are fully informed and participate actively in the formulation and implementation of policies and decisions, both for society as a whole and for older persons in particular.**

99. **Given that physical ability, individual characteristics and the transport environment crucially influence the mobility of older persons, the Independent Expert encourages the authorities to take further measures to improve the mobility of older persons in rural areas, such as through the provision of improved access to public transport.**

100. **She encourages the Government to ensure an increased focus on the needs of older persons living in rural and remote areas, as well as small villages where older Sami, Roma and other persons who are members of linguistic, religious or ethnic minorities live. It is essential to plan and implement viable transport and infrastructure options for the ageing population to ensure their access to essential services.**

9. Participation in decision-making processes

101. **In relation to participation in decision-making processes, in general, the authorities consult with older persons and their organizations in municipalities through an established formal consultation processes and councils of older persons. The Independent Expert recommends that, not only should older persons be invited to comment, either directly or through representative organizations, on processes that affect them but that they should also be able to influence the outcomes of such decisions.**

10. Research and studies

102. **The Independent Experts recommends increasing funding for research in the field of human rights of older persons, with a focus on their lived realities and the**

barriers that they face in different settings, including in relation to climate change, emergency settings and the workplace.