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OLDER PERSONS, THE SUSTAINABLE DEVELOPMENT GOALS, AND HUMAN RIGHTS

BELINDA BENNETT*

In 2015, the adoption of the Sustainable Development Goals ('SDGs') set new goals and targets for global health and set out the goal to leave no one behind. With populations ageing in many countries, there is a clear need for the interests of older persons to be recognised as a priority in the work towards achieving the SDGs. This article considers the intersection between the SDGs and human rights and how each may contribute to advancing the rights of older persons. It analyses the relevance of the SDGs for older persons, contemporary debates on the rights of older persons, and the importance of data being disaggregated by age.

* Professor of Health Law and New Technologies, Australian Centre for Health Law Research, School of Law, Queensland University of Technology (QUT). Belinda would like to thank the anonymous reviewers for their helpful comments and suggestions and Elizabeth Dallaston for her research assistance.

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I INTRODUCTION

In 2015, the United Nations General Assembly adopted 17 Sustainable Development Goals ('SDGs') and 169 targets,¹ with the overarching goal that 'no one will be left behind'.² Within the SDGs, SDG3 is focused on health, with the goal to 'ensure healthy lives and promote well-being for all at all ages'.³ While the SDGs set goals and targets for 2030, the COVID-19 pandemic has presented new, immediate challenges and needs,⁴ and set back progress towards achieving the SDGs and their targets.⁵

The goal of the SDGs of leaving no-one behind, and the specific goal in SDG3 of meeting the health needs of all at all ages, is ambitious. It requires developing an understanding of, and recognition that, health needs will vary across the life course,⁶ and between

¹ United Nations General Assembly, *Transforming our World: The 2030 Agenda for Sustainable Development* (A/Res/70/1) (2015) ('*Sustainable Development*').

² Ibid para 4. For discussion see Inga T Winkler and Margaret L Satterthwaite, 'Leaving No One Behind? Persistent Inequalities in the SDGs' (2017) 21(8) *The International Journal of Human Rights* 1073.

³ United Nations General Assembly, *Sustainable Development* (n 1) SDG3.

⁴ Kristin Heggen, Tony J Sandset, Eivind Engebretsen, 'COVID-19 and Sustainable Development Goals' (2020) 98 *Bulletin of the World Health Organization* 646; Editorial, 'Will the COVID-19 Pandemic Threaten the SDGs?' (2020) 5 *Lancet Public Health* e460. For a report on progress on the SDGs see, United Nations, *The Sustainable Development Goals Report 2021* ('*Sustainable Development Goals Report 2021*').

⁵ United Nations, *Sustainable Development Goals Report 2021* (n 4).

⁶ For discussion of health across the life course see, Flavia Bustreo et al, 'Editorial: At the Crossroads: Transforming Health Systems to Address Women's Health Across the Life Course' (2013) 91 *Bulletin of the World Health Organization* 622; Shyama Kuruvilla et al, 'A Life-Course Approach to Health: Synergy with Sustainable Development Goals' (2018) 96 *Bulletin of the World Health Organization* 42.

people of the same age. With the ageing of populations in many countries, ensuring that older persons are not left behind is an issue of emerging importance.

This article analyses this issue using the health of older persons as a lens through which to consider the rights of older persons within the context of the SDGs and debates over the human rights of older persons. It considers the intersection between the SDGs and human rights and how each may contribute to advancing the rights of older persons. As this article will argue, in the absence of a convention to recognise and support the rights of older persons there is a risk that they will be left behind.

Part II begins by analysing the extent to which older persons are expressly included in the SDGs. It argues that the interests of older persons need to be considered expressly as part of the work towards achieving the SDGs. Part III explores the importance of recognising difference in developing understandings of older age. It argues that an appreciation of these differences will be key to developing laws, policies, and programs for older persons. This will mean taking account of the ways in which the experience of older age can also be shaped by other factors such as race and gender. Part IV considers the importance of rights in relation to achieving the SDGs and considers debates over the need for a convention on the rights of older persons, given that there is currently no convention focused on their rights. Part V discusses the importance of measuring progress towards achieving the SDGs. The paper concludes in Part VI with a call for the express consideration of the rights of older persons as part of work towards the SDGs in order to ensure that we leave no one behind.

II OLDER PERSONS AND THE SUSTAINABLE DEVELOPMENT GOALS

The SDGs are relevant to all persons at all ages. As the Sustainable Development Declaration indicated:

...we pledge that no one will be left behind. Recognizing that the dignity of the human person is fundamental, we wish to see the Goals and targets met for all nations and peoples and for all segments of society. And we will endeavour to reach the furthest behind first.⁷

⁷ United Nations General Assembly, *Sustainable Development* (n 1) para 4.

While the SDGs apply to all, some of its goals and targets are directed to particular age groups. For example, targets aimed at reducing maternal mortality rates,⁸ are clearly directed to women of reproductive age. Similarly, targets directed to reducing mortality rates for children under five years of age,⁹ or ensuring pre-primary, primary, and secondary education for children,¹⁰ are clearly directed to improving outcomes for children.

The interests of older persons are also relevant to the SDGs.¹¹ The goal of improving the health of older persons is encompassed within the general goal of SDG3 of 'health for all at all ages', although there is no specific target within SDG3 addressing the health of older persons. Other goals and targets including reducing poverty (SDG1), ensuring access to universal health coverage (SDG3.8), and reducing inequality (SDG10), will all be relevant to older persons.¹² For example, SDG1.2 sets the target of 'By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions'.¹³ Given that many older people experience poverty,¹⁴ SDG1.2 will clearly be important for older people, even though it is expressed for people 'of all ages' rather than being expressly directed at poverty related to older age. Also relevant to the rights of older persons is SDG10.2 with its goal to 'empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status'.¹⁵ Older persons are also mentioned in SDG11.7 on the need to provide 'universal access to safe, inclusive and

⁸ Ibid, SDG 3.1: 'By 2030, reduce the global maternal mortality ratio to less than 70 per 100,000 live births.'

⁹ Ibid, SDG3.2: 'By 2030, end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births.'

¹⁰ Ibid, SDG4.1: 'By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes' and SDG4.2: 'By 2030, ensure that all girls and boys have access to quality early childhood development, care, and pre-primary education so that they are ready for primary education.'

¹¹ World Health Organization, *Global Strategy and Action Plan on Ageing and Health* (World Health Organization, 2017) ('*Global Strategy and Action Plan*') 1: 'Ageing is an issue that is relevant to 15 of the 17 Goals.'

¹² Ibid.

¹³ United Nations General Assembly, *Sustainable Development* (n 1) SDG1.2.

¹⁴ World Health Organization, *World Report on Ageing and Health* (World Health Organization, 2015) 161-162 ('*World Report on Ageing and Health*').

¹⁵ United Nations General Assembly, *Sustainable Development* (n 1) SDG10.2. See also, World Health Organization, *Global Strategy and Action Plan* (n 11) 1.

accessible, green and public spaces'.¹⁶ While the SDGs are relevant to older persons, the World Health Organization ('WHO') has noted '[a]chieving these ambitious Goals will require concerted action both to harness the many contributions that older people can make to sustainable development and to ensure that they are not left behind'.¹⁷ Furthermore, the impact of the COVID-19 pandemic risks undermining progress on the SDGs¹⁸ and, as a result, progress in areas relevant to older persons. The disproportionate impact of the COVID-19 pandemic on older persons has given a new focus to consideration of the needs of older persons.¹⁹

The imperative to address age-related health needs is becoming more compelling, with ageing becoming a key feature of global populations, and thus of global health. Around the world, populations are ageing. While globally there were 205 million people aged 60 or older in 1950, by 2012 there were almost 810 million, with this figure expected to increase to 2 billion by 2050.²⁰ The United Nations has commented that 'population ageing is poised to become one of the most significant social transformations of the twenty-first century, with implications for nearly all sections of society'.²¹

On the one hand, contemporary narratives of ageing reflect the idea of ageing as a story of the successes of modern medicine and public health to provide increasing life expectancies.²² Average life expectancies in developed countries have increased from 45–50 years in 1900, to 80 years currently.²³ A 2012 report by the United Nations Population Fund and HelpAge International described the ageing of the world's population as 'a celebration and a challenge',²⁴ stating that '[a]geing is a triumph of

¹⁶ United Nations General Assembly, *Sustainable Development* (n 1) SDG11.7. See also, World Health Organization, *Global Strategy and Action Plan* (n 11) 1.

¹⁷ World Health Organization, *Global Strategy and Action Plan* (n 11) 1.

¹⁸ United Nations, *Sustainable Development Goals Report 2021* (n 4); Editorial (n 4).

¹⁹ United Nations, *Sustainable Development Goals Report 2021* (n 4) 32; United Nations, *Policy Brief: The Impact of COVID-19 on Older Persons* (May 2020) ('*Impact of COVID-19 on Older Persons*'). See also, Belinda Bennett et al, 'Australian Law During COVID-19: Meeting the Needs of Older Australians?' (2022) 41(2) *University of Queensland Law Journal* (forthcoming) ('*Australian Law During COVID-19*'); Belinda Bennett, Ian Freckelton and Gabrielle Wolf, *COVID-19, Law & Regulation: Rights, Freedoms and Obligations in a Pandemic* (Oxford University Press, forthcoming) ch 7.

²⁰ United Nations Population Fund and HelpAge International, *Ageing in the Twenty-First Century: A Celebration and a Challenge* (United Nations Population Fund and HelpAge International, 2012) 19.

²¹ United Nations, *Ageing* <un.org/en/global-issues/ageing> (accessed 3 May 2022).

²² Alison Kesby, 'Narratives of Aging and the Human Rights of Older Persons' (2017) 18(4) *Human Rights Review* 371, 371.

²³ United Nations Population Fund and HelpAge International (n 20) 20.

²⁴ United Nations Population Fund and HelpAge International (n 20).

development. Increasing longevity is one of humanity's greatest achievements'.²⁵ The Madrid International Plan of Action on Ageing refers to 'a revolution in longevity' during the 20th century, and a 'demographic triumph'.²⁶ More recently, the United Nations Department of Economic and Social Affairs has noted:

*The world continues to experience a sustained change in the age structure of the population, driven by increasing life expectancy and decreasing levels of fertility. People are living longer lives, and both the share and the number of older people in the total population are increasing rapidly.*²⁷

Statistics of life expectancies at birth are seen as a marker for the economic development of a country²⁸ and its ability to deliver quality health care and the conditions for a healthy life to its population. Importantly, increasing life expectancies is associated with reduced childhood mortality:

*...as countries develop economically, more people live into adulthood and so life expectancy at birth increases. The majority of the increases in life expectancy seen around the world during the past 100 years [...] reflect this reduced mortality at younger ages rather than older people living longer.*²⁹

On the other hand however, contemporary narratives of ageing are not only about the successes associated with increasing life expectancies but can also reflect concerns of an impending crisis,³⁰ fuelled by ageing populations, falling birth rates, and budgetary pressures from rising health care costs to care for the elderly,³¹ with expected increases

²⁵ Ibid 12.

²⁶ United Nations, *Madrid International Plan of Action on Ageing* (Second World Assembly on Ageing, Madrid, 8-12 April 2002), para 2. For further discussion of the Madrid International Plan of Action on Ageing see, United Nations Population Fund and HelpAge International (n 20) 30-32.

²⁷ United Nations, Department of Economic and Social Affairs, *World Population Ageing 2020 Highlights: Living Arrangements of Older Persons* (2020) 3.

²⁸ World Health Organization, *World Report on Ageing and Health* (n 14) 45.

²⁹ Ibid.

³⁰ Kesby (n 22) 371, 374.

³¹ Ibid 374. Neven and Peine refer to this as the 'crisis account of ageing': Louis Neven and Alexander Peine, 'From Triple Win to Triple Sin: How a Problematic Future Discourse is Shaping the Way People Age with Technology' (2017) 7 *Societies* 26 at 3.

in health care costs, for example with the number of people living with dementia expected to contribute to these rising costs.³²

WHO has noted that 'Because older people are often stereotyped as part of the past, they can be overlooked in the surge towards the future'.³³ This makes it particularly important to address expressly the needs of older persons as part of the work towards achieving the SDGs and the goal that 'no one will be left behind'.³⁴ Addressing the needs of older persons, including age-related poverty, inadequate income security, threats to safety, and in relation to access to medical and social care, will all be important for achieving sustainable development and 'development for all'.³⁵ For example, ensuring adequate housing for older persons is important, with the Australian Human Rights Commission noting that 'Older women are the fastest growing cohort of people at risk of homelessness'.³⁶ SDG11.1 addresses the issue of housing: 'By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums'.³⁷ Furthermore, failing to address the health needs of an older person may have implications for other family members, often female, who may then need to provide care for the older person, with a potential consequent effect on their own employment or educational possibilities.³⁸ Recognition of the diversity of older populations is also important in identifying which policy initiatives will support equity and which will not.³⁹ Such initiatives are key to ensuring that the SDGs meet the needs of older persons. The importance of recognising difference is discussed in Part III.

III RECOGNISING DIFFERENCE

As noted above, recognising the needs of older persons across all aspects of their lives will be key to ensuring that they are not left behind in the work towards achieving the

³² 'With no disease-modifying treatments for dementia currently available, health-care systems are in danger of becoming overwhelmed by the future costs of caring for people with dementia.': Helen Frankish and Richard Horton, 'Prevention and Management of Dementia: A Priority for Public Health' (2017) 390(10113) *Lancet* 2614.

³³ World Health Organization, *World Report on Ageing and Health* (n 14) 15.

³⁴ United Nations General Assembly, *Sustainable Development* (n 1) preamble.

³⁵ World Health Organization, *World Report on Ageing and Health* (n 14) 15.

³⁶ Australian Human Rights Commission, *What's Age Got to Do With It? A Snapshot of Ageism Across the Australian Lifespan* (September 2021) 103.

³⁷ United Nations General Assembly, *Sustainable Development* (n 1) SDG 11.1.

³⁸ World Health Organization, *World Report on Ageing and Health* (n 14) 15.

³⁹ *Ibid* 16. See also, Bennett et al, 'Australian Law During COVID-19' (n 19).

SDGs. However, recognising the diversity that exists within older populations is also key to meeting the needs of older persons. Yet, homogeneity is an underlying narrative of contemporary discourses about ageing.⁴⁰ References are made to ‘the elderly’, ‘older persons’, and ‘the aged’ as if reaching old age renders other characteristics invisible, although just when these categories begin is less clear. In some instances it is equated with traditional ages for retirement, or when age-related social security entitlements take effect.⁴¹ Even this line has moved in recent years, with pension ages in Australia rising incrementally from the traditional age-pension entitlement age of 65 years to 67 years in July 2023.⁴² There is also a growing focus on ‘healthy ageing’,⁴³ and changing social expectations of social engagement in which ‘70 becomes the new 60’.⁴⁴

Instead of homogeneity, older age is instead characterised by diversity, with some older people retaining their physical and mental capacities into old age, while others may require assistance with daily activities.⁴⁵ This diversity is relevant for the development of age-related public policy.⁴⁶ For example, one measure — the old-age dependency ratio — measures the number of people over the age of 65 years relative to those of working age (15–64 years).⁴⁷ However, as WHO has noted, this measure assumes that all people between 15–65 years are working, when many in fact are not, and that all people over the age of 64 years are dependent, when in fact many are still participating in employment.⁴⁸ Furthermore, these assumptions fail to take account of the economic contributions made by older people through their spending, through the financial contributions that older family members may make to younger family members,⁴⁹ or through the contribution that grandparents make in caring for their grandchildren.⁵⁰

⁴⁰ Kesby (n 22) 376.

⁴¹ *Ibid* 377.

⁴² Australian Government, Department of Social Services, *Age Pension* <www.dss.gov.au/seniors/benefits-payments/age-pension> (accessed 8 August 2022).

⁴³ World Health Organization, *World Report on Ageing and Health* (n 14) ch 2.

⁴⁴ *Ibid* 8.

⁴⁵ *Ibid* 7. For discussion see also Bennett et al, ‘Australian Law During COVID-19’ (n 19).

⁴⁶ World Health Organization, *World Report on Ageing and Health* (n 14) 7.

⁴⁷ *Ibid* 16. See also Kesby (n 22) 375.

⁴⁸ World Health Organization, *World Report on Ageing and Health* (n 14) 16.

⁴⁹ *Ibid*.

⁵⁰ United Nations Population Fund and HelpAge International (n 20) 35.

In addition, when one becomes 'old' and how ageing is experienced are also not universal. Across the globe, differences in life expectancies⁵¹ mean that ageing and old age are experienced differently. Thus, ageing differs within and between countries, with race, socio-economic status, and gender all shaping the experience of ageing.⁵² In Australia, the life expectancies of Indigenous Australians are lower than those of the general Australian population. In 2015–17, Indigenous men had a life expectancy at birth of 71.6 years, 8.6 years lower than the life expectancy for non-Indigenous men of 80.2 years, and Indigenous women had a life expectancy at birth of 75.6 years – 7.8 years lower than the life expectancy of non-Indigenous women.⁵³

There are also gendered aspects to ageing.⁵⁴ As the Committee on the Elimination of Discrimination Against Women noted in its *General Recommendation No 27 on Older Women and Protection of Their Human Rights* in 2010, 'The gendered nature of ageing reveals that women tend to live longer than men, and that more older women than men live alone'.⁵⁵ In 2012, there were 84 men for every 100 women aged 60, but only 61 men for every 100 women aged 80 or over,⁵⁶ representing a 'feminization of ageing'.⁵⁷ Although women tend to live longer than men, they are also likely to have more years lived with poor health,⁵⁸ with earlier life inequalities including multiple pregnancies, poor access to education and health care, and lower education and earnings all contributing to health problems experienced by older women.⁵⁹ However, the gendered nature of older age does not only affect women. Loss of earning potential in retirement may impact upon men's roles in society, men's social networks may be weaker than those of older women, and both men and women may experience age discrimination.⁶⁰ These

⁵¹ World Health Organization, *World Report on Ageing and Health* (n 14) 48.

⁵² United Nations, Department of Economic and Social Affairs Programme on Ageing, *Health Inequalities in Old Age* 3; Editorial, 'Compounding Inequalities: Racism, Ageism, and Health' (2021) 2(3) *Lancet Healthy Longevity* e112.

⁵³ Australian Institute of Health and Welfare, 'Deaths in Australia' (2022)

<<https://www.aihw.gov.au/reports/life-expectancy-death/deaths-in-australia/contents/life-expectancy>> (accessed 8 August 2022).

⁵⁴ Editorial, 'Ageing Unequally' (2021) 2(5) *Lancet Healthy Longevity* e231.

⁵⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation No 27 on Older Women and Protection of Their Human Rights* (2010) (CEDAW/C/GC/27), para 5.

⁵⁶ United Nations Population Fund and HelpAge International (n 20) 27.

⁵⁷ *Ibid.*

⁵⁸ *Ibid* 28.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

issues make it important to develop gendered understandings of older age that reflect the experiences and needs of both men and women.⁶¹

These factors highlight the fact that ageing is not only a matter of chronological age, but is also ‘constructed by a series of continuously evolving social phenomena and representations’.⁶² Recognition of the diversity that exists within older populations is important if we are to avoid essentialist conceptualisations of older age.⁶³ Furthermore, understanding older age as part of a range of experiences and capabilities, instead of grouping older persons into one group, allows for the development of policy initiatives that address the needs of all older members of the community.⁶⁴ At the same time, however, this diversity itself poses challenges for the development of policy and for the articulation of age-related rights as the threshold definitional issue of when ‘old age’ begins remains open to debate.⁶⁵

IV THE IMPORTANCE OF RIGHTS IN ACHIEVING THE SDGs

The Sustainable Development Declaration articulates a vision in which human rights play a key role, including:

*We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality, and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.*⁶⁶

The Declaration also reaffirmed the ‘the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law’.⁶⁷ Despite these statements, it has been noted that the targets in SDG3

⁶¹ Ibid. For discussion of gender in global health debates generally see, Sarah Hawkes and Kent Buse, ‘Gender and Global Health: Evidence, Policy and Inconvenient Truths’ (2013) 381(9879) *Lancet* 1783.

⁶² Frederic Mégret, ‘The Human Rights of Older Persons: A Growing Challenge’ (2011) 11 *Human Rights Law Review* 37, 44.

⁶³ Ibid 43.

⁶⁴ World Health Organization, *World Report on Ageing and Health* (n 14) 7-8, 16. See also, Bennett et al, ‘Australian Law During COVID-19’ (n 19).

⁶⁵ Kesby (n 22) 373–74; Mégret (n 62) 42–43; Bennett et al, ‘Australian Law During COVID-19’ (n 19).

⁶⁶ United Nations General Assembly, *Sustainable Development* (n 1) para 8. For discussion see Audrey R Chapman, ‘Evaluating the Health-Related Targets in the Sustainable Development Goals from a Human Rights Perspective’ (2017) 21(8) *International Journal of Human Rights* 1098, 1099.

⁶⁷ United Nations General Assembly, *Sustainable Development* (n 1) para 19.

relating to health are not expressed in terms of rights,⁶⁸ and there is discussion about the role of rights in the SDGs in relation to health.⁶⁹

The policy landscape and the experience of older age are, however, increasingly shaped by the language of rights and the degree to which the rights and needs of older persons are expressly recognised and protected. There are two aspects to this. The first is the way in which the rights of older persons are conceptualised within international human rights law. The second is the relationship between health and human rights and the potential this has for recognition of rights at the intersections between older age and health. Importantly, ascribing rights to individuals or groups provides a formal recognition of the values of equality and non-discrimination,⁷⁰ and depending on the context in which rights are provided, may also provide remedies if rights are not upheld.⁷¹

The human rights of older people have been the subject of considerable discussion. The Madrid International Plan of Action on Ageing stated that '[m]ainstreaming ageing into global agendas is essential',⁷² and recognised the importance of protecting the human rights of older persons:

*The promotion and protection of all human rights and fundamental freedoms, including the right to development, is essential for the creation of an inclusive society for all ages in which older persons participate fully and without discrimination and on the basis of equality.*⁷³

In 2016, the Report of the Independent Expert on the enjoyment of all human rights by older persons noted that 'As the world population continues to age, the human rights

⁶⁸ Chapman (n 66) 1099.

⁶⁹ Chapman (n 66); Lisa Forman, Gorik Ooms, and Claire E Brolan, 'Rights Language in the Sustainable Development Agenda: Has Right to Health Discourse and Norms Shaped Health Goals?' (2015) 4(12) *International Journal of Health Policy Management* 799; Sarah Hawkes and Kent Buse, 'Searching for the Right to Health in the Sustainable Development Agenda: Comment on "Rights Language in the Sustainable Development Agenda: Has Right to Health Discourse and Norms Shaped Health Goals?"' (2016) 5(5) *International Journal of Health Policy Management* 337.

⁷⁰ Mégret (n 62) 64–65. As Mégret notes at 65: 'There are also many powerful symbolic advantages to group-specific human rights instruments, including a recognition that the issue is fully one of human rights, and a strong at least implicit claim to equality in relation to other groups'. For discussion see also, Bennett et al, 'Australian Law During COVID-19' (n 19).

⁷¹ Mégret (n 62) 47; Bennett et al, 'Australian Law During COVID-19' (n 19).

⁷² United Nations, *Madrid International Action Plan on Ageing* (n 26) para 15.

⁷³ *Ibid* para 13.

dimension of ageing becomes an ever-growing concern'.⁷⁴ In 2016, the 69th World Health Assembly adopted the Global Strategy and Action Plan on Ageing and Health.⁷⁵

To date however, there is no international instrument for the rights of older persons within international human rights law.⁷⁶ This is in contrast with the human rights of other groups including women, children, and persons with disabilities which have all been the subject of conventions,⁷⁷ and despite the growing recognition of the need for formal recognition of the rights of older persons.⁷⁸ This phenomenon of specific human rights instruments for different groups has been described as reflecting the 'fragmentation of human rights'.⁷⁹ However, the absence of a human rights instrument addressing the rights of older persons is significant. Indeed, one commentator has stated that, '[t]he rights of the elderly in the twenty-first century are what women's rights were to the twentieth — equally as momentous yet largely unstudied and unrecognised'.⁸⁰ Furthermore, the COVID-19 pandemic has provided a renewed focus on the rights of older persons.⁸¹

⁷⁴ United Nations, Human Rights Council, Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons (A/HRC/33/44) (8 July 2016) para 121. The Independent Expert was appointed by the Human Rights Council of the United Nations in 2013, *ibid* para 1.

⁷⁵ World Health Assembly, *WHA69.3 Global Strategy and Action Plan on Ageing and Health 2016-2020: Towards a World in Which Everyone Can Live a Long and Healthy Life* (WHA69/2016/REC/1). See also, World Health Organization, *Global Strategy and Action Plan* (n 11) Annex 1.

⁷⁶ Mégret (n 62) 39; United Nations Population Fund and HelpAge International (n 20) 32; Léon Poffé, 'Towards a New United Nations Human Rights Convention for Older Persons?' (2015) 15(3) *Human Rights Law Review* 591; Annie Herro, 'The Human Rights of Older Persons: The Politics and Substance of the UN Open-Ended Working Group on Ageing' (2017) 23(1) *Australian Journal of Human Rights* 90.

⁷⁷ Mégret (n 62) 39; Bennett et al, 'Australian Law During COVID-19' (n 19). See: *Convention on the Elimination of All Forms of Discrimination Against Women* 1249 UNTS 1 (entered into force 3 September 1981); *Convention on the Rights of the Child* 1557 UNTS 3 (entered into force 2 September 1990); *Convention on the Rights of Persons with Disabilities* 2515 UNTS 3 (entered into force 3 May 2008).

⁷⁸ Bennett et al, 'Australian Law During COVID-19' (n 19); Kesby (n 22); Mégret (n 62) 39; Poffé (n 76); Herro (n 76); Britta Baer et al, 'The Right to Health of Older People' (2016) 56(S2) *Gerontologist* S206; Barbara Mikołajczyk, 'Older Persons' Right to Health: A Challenge to International Law' (2019) 39 *Ageing & Society* 1611.

⁷⁹ Mégret (n 62) 39. As Mégret comments at 41: 'The fragmentation of the human rights project may be in line with a more post-modern sensitivity to rights, one more attuned to the diversity of human experience, but it also poses some dangers in terms of the intelligibility and coherence of the idea of universal rights.'

⁸⁰ Herro (n 76) 90.

⁸¹ John E Ataguba, David E Bloom, Andrew J Scott, 'A Timely Call to Establish an International Convention on the Rights of Older People' (2021) 2(9) *Lancet Healthy Longevity* e540; Benjamin Mason Meier, Victoria Matus, and Maximillian Seunik, 'COVID-19 Raises a Health and Human Rights Imperative to Advance a UN Convention on the Rights of Older Persons' (2021) 6 *BMJ Global Health* e007710; Bennett et al, 'Australian Law During COVID-19' (n 19).

Law is increasingly seen as playing an important role in supporting global health by providing the regulatory frameworks that support the right to health and achievement of health-related goals for sustainable development.⁸² As WHO noted in its 2015 *World Report on Ageing and Health*: 'A rights-based approach to healthy ageing can help address the legal, social and structural barriers to good health for older people, and clarify the legal obligations of state and non-state actors to respect, protect, and fulfil these rights'.⁸³ Furthermore, in the context of the SDGs, formal recognition of the rights of older persons, such as through a new convention, could provide new awareness of the rights and interests of older persons and help to ensure that they are expressly included in the work towards achieving the SDGs.

The diversity that exists within older populations can present challenges for conceptualising the elderly as a specific group to be the subject of a human rights instrument. As Mégret notes, although like children, the elderly are defined by their age, they may be more difficult than children to define as a group.⁸⁴ Furthermore, some older persons may not see themselves as belonging to the category of 'elderly'.⁸⁵ However, as a practical matter, it will be necessary to have some definition of 'old age' for the purposes of an international treaty.⁸⁶

Given these difficulties of defining 'old age' and the recognition that already exists within some existing international instruments for the rights of older persons, it could be argued that a new convention that expressly addresses the rights of older persons is unnecessary.⁸⁷ Furthermore, might a convention that focuses on older persons reinforce negative perceptions of older persons as vulnerable?⁸⁸ Could the *Convention on the Rights of Persons with Disabilities* ('CRPD') and other human rights instruments be seen as already covering the needs of older persons?⁸⁹ However, as Clough and Brazier have

⁸² Lawrence O Gostin et al, 'The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development' (2019) 393(10183) *Lancet* 1857.

⁸³ World Health Organization, *World Report on Ageing and Health* (n 14) 14.

⁸⁴ Mégret (n 62) 42. See also, Bennett et al, 'Australian Law During COVID-19' (n 19).

⁸⁵ Mégret (n 62) 43.

⁸⁶ *Ibid.* See also Bennett et al, 'Australian Law During COVID-19' (n 19).

⁸⁷ For discussion see Beverley Clough and Margaret Brazier, 'Never Too Old for Health and Human Rights?' (2014) 14(3) *Medical Law International* 133, 153–154. See also Bennett et al, 'Australian Law During COVID-19' (n 19).

⁸⁸ Clough and Brazier (n 87) 154.

⁸⁹ For discussion see *ibid* 153–154.

argued, the *CRPD* does not adequately address all age-related rights issues.⁹⁰ Furthermore, 'Despite the relatively high level of concurrent disability in older people, older people do not tend to identify themselves with disability rights movements',⁹¹ thus making a specific human rights instrument for older persons appropriate. Mégret argues that in deciding whether the experience of older persons is sufficiently distinctive to justify an approach focused on the elderly, the starting point should be 'the actual rights experience of the elderly, in an effort to determine what is distinctive about the way in which their rights can be violated or protected'.⁹²

The issue of a formal human rights convention for older persons is also made more complex by critiques of rights, which have challenged the idea of rights as providing solutions to inequality. Amongst feminist critiques of rights for example, have been concerns that human rights law presupposes an individualistic legal subject as the bearer of the rights,⁹³ and that this fails to adequately address the experiences and needs of women,⁹⁴ with many important issues for women falling outside the traditional public sphere of human rights law.⁹⁵ Furthermore, it has been argued that the individualised nature of rights may fail to address the needs of the group as a whole, while a group approach to rights may fail to recognise that the group itself may be characterised by diversity,⁹⁶ as has been argued above, is the case with older persons.

It has also been pointed out that 'the dominant narrative of a human rights approach to ageing is that of the reconceptualization of older persons as active and entitled subjects as opposed to passive recipients of welfare or charity'.⁹⁷ This reconceptualisation is to be welcomed, although Kesby cautions that there is a need to ensure that we do not base the need for human rights for older persons on their (potential) economic productivity.⁹⁸

⁹⁰ Ibid. Bennett et al, 'Australian Law During COVID-19' (n 19).

⁹¹ Clough and Brazier (n 87) 154.

⁹² Mégret (n 62) 51.

⁹³ Laura Pritchard-Jones, 'Revisiting the Feminist Critique of Rights: Lessons for a New Older Persons' Convention?' in Beverley Clough and Jonathan Herring (eds), *Ageing, Gender and Family Law* (Routledge, 2018) 109, 110.

⁹⁴ Ibid 110–112.

⁹⁵ Ibid 113.

⁹⁶ Ibid 112.

⁹⁷ Kesby (n 22) 386.

⁹⁸ Ibid 387–388.

Such an approach could, Kesby argues, raise the question of the justification for rights for those who are not 'productive',⁹⁹ such as those who are frail and unwell.

However, even without a dedicated convention for older persons, a human rights approach can provide a valuable framework for evaluating the degree to which policies and measures are supportive of the interests and needs of older persons. For example, assistive technologies can help to support improved functioning, and support continued independence,¹⁰⁰ although it is also important to note broader privacy and autonomy-related interests.¹⁰¹ It is this potential for some interventions to either enhance or undermine autonomy, privacy, and other interests that makes a human rights analysis of these interventions essential.¹⁰²

V MEASURING PROGRESS

Finally, it is important to be able to measure progress — or lack thereof — in relation to the SDGs. In many respects, this call for measuring progress should appear unsurprising, as it has played an increasingly important role in contemporary human rights, with quantitative indicators becoming an important tool in measuring progress towards realisation of rights, health-related goals, or other benchmarks.¹⁰³ In the context of healthy ageing, WHO has noted that enhancing our understanding of age-related issues will require that we improve our measurement, our monitoring and our understanding.¹⁰⁴ As an initial measure at a global level it will be important for older persons to be included in population surveys and in vital statistics.¹⁰⁵

The importance of disaggregated data was also recognised in the Sustainable Development Agenda, with SDG17.18 stating:

⁹⁹ Ibid 388.

¹⁰⁰ World Health Organization, *World Report on Ageing and Health* (n 14) 111, 137, 166–168.

¹⁰¹ Belinda Bennett et al, 'Assistive Technologies for People with Dementia: Ethical Considerations' (2017) 95 *Bulletin of the World Health Organization* 749; Belinda Bennett, 'Technology, Ageing and Human Rights: Challenges for an Ageing World' (2019) 66 *International Journal of Law and Psychiatry* 101449.

¹⁰² Bennett et al (n 101); Bennett (n 101).

¹⁰³ Thérèse Murphy, *Health and Human Rights* (Hart Publishing, 2013) ch 4.

¹⁰⁴ World Health Organization, *World Report on Ageing and Health* (n 14) 221.

¹⁰⁵ Ibid.

*By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.*¹⁰⁶

Furthermore, data needs to be disaggregated to be able to distinguish between different age groupings of older persons, with the United Nations suggesting that data for older persons be available ‘by five-year age groups’.¹⁰⁷ Even when data are disaggregated, it has also been noted that there is a need for standardised age groupings to enable comparisons to be made within and between countries.¹⁰⁸

Strategic objective 5 of the Global Strategy and Action Plan on Ageing and Health is ‘Improving measurement, monitoring and research on Healthy Ageing’.¹⁰⁹ Measuring progress for older persons will require data collection to be age-inclusive, and for data to be disaggregated on the basis of age, sex and other characteristics.¹¹⁰ Strategic objective 5.1 in the Global Strategy and Action Plan is to ‘agree on ways to measure, analyse, describe and monitor Healthy Ageing’,¹¹¹ to allow a more comprehensive understanding of the health of older persons and interventions to address health issues.¹¹² Access to data that are disaggregated by age has been particularly important during the COVID-19 pandemic as disaggregated data can help to identify the impact of the pandemic,¹¹³ and to inform policy development.¹¹⁴

¹⁰⁶ United Nations General Assembly, *Sustainable Development* (n 1) SDG17.18. See also Winkler and Satterthwaite (n 2) 1074: ‘This target makes clear that data-gathering and analysis for *all* goals and targets, where disaggregable, should aim at highlighting inequalities.’

¹⁰⁷ United Nations, *Impact of COVID-19 on Older Persons* (n 19) 15.

¹⁰⁸ Theresa Diaz, et al. ‘A Call for Standardised Age-Disaggregated Health Data’ (2021) 2(7) *Lancet Healthy Longevity* e436, e436.

¹⁰⁹ World Health Organization, *Global Strategy and Action Plan* (n 11) 6.

¹¹⁰ *Ibid* 21.

¹¹¹ *Ibid* 22.

¹¹² *Ibid*.

¹¹³ Diaz et al (n 108) e437. See also, Bennett, Freckelton and Wolf (n 19) ch 3.

¹¹⁴ United Nations, *The Impact of COVID-19 on Older Persons* (n 19) 4.

While data are not self-evidently about autonomy or rights, it is also the case that what gets measured gets done. The availability of disaggregated data is an essential element of tracking progress in outcomes, both between and within countries. As Winkler and Satterthwaite argue:

The framing of indicators and the disaggregation they call for are therefore not just technical details; they have significant influence on what data governments and development partners will gather over the next 15 years or more and ‘what matters’ in the implementation of the Sustainable Development Agenda. The SDG indicators will help shape what governments, development partners and people — disadvantaged or powerful — will know about discrimination, exclusion, and equality.¹¹⁵

Having age-related information available is important to be able to measure progress against the SDGs and in providing an evidence-base for policy making to address the health needs of members of the community, including older persons.

VI CONCLUSION

The United Nations has noted that the COVID-19 pandemic ‘has brought unprecedented challenges to humanity and presents a disproportionate threat to the health, lives, rights and well-being of older persons’.¹¹⁶ However, the United Nations also notes that the recovery from COVID-19 ‘is an opportunity to set the stage for a more inclusive, equitable and age-friendly society, anchored in human rights and guided by the shared promise of the 2030 Agenda for Sustainable Development to *Leave No One Behind*’.¹¹⁷ While the SDGs set new targets for global health and development, there is a risk that older people will be left behind unless attention is paid to their needs. From a regulatory perspective the issues are complex, with no agreed definition of when one becomes old, and with older populations characterised by diversity in their experience of ageing and in their health and functional ability. While a convention specifically focused on ageing would give profile to the interests of older persons, in the absence of a convention it is important to

¹¹⁵ Winkler and Satterthwaite (n 2) 1077.

¹¹⁶ United Nations, *The Impact of COVID-19 on Older Persons* (n 19) 16.

¹¹⁷ *Ibid.*

consider how best to conceptualise rights and how they relate to autonomy and vulnerability in representing the realities of people's lives and promoting their interests.

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