

Open-ended Working Group on Ageing
for the purpose of strengthening the protection of the human rights of older persons
(General Assembly resolution 65/182)

Third Working Session
New York, 21-24 August 2012

I. Introduction

1. The United Nations General Assembly created an Open-ended Working Group (OEWG) on Ageing in December 2010 to consider existing international framework on human rights of older persons, and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.
2. The OEWG on Ageing held its first organizational meeting in February 2011, which was followed by two working sessions organized around five main topics: discrimination and multiple discrimination; right to the enjoyment of the highest attainable standard of physical and mental health; violence and abuse; social protection and the right to social security; as well as age and social exclusion.
3. These working sessions included panel presentations and discussions about the current situation of human rights of older persons, presented by expert panellists from around the world. In examining the extent to which policies, policy provisions and practices as well as legislation address the human rights of older persons, the panellists voiced concern regarding the inadequate attention and pace of action granted to older persons at both national and international levels, and made reference to the limitations of existing mechanisms.

II. General Overview

4. The third session of the OEWG on Ageing drew on the enquiries made by Member States at the second working session, and revisited specific issues and rights of older persons to develop a better understanding of these issues and provide more evidence-based options for addressing them. The third working session consisted therefore of four interactive expert panel discussions on age discrimination; autonomy, independent living and healthcare; life in dignity, social security and access to resources; abuse and violence; with the addition of a new thematic issue namely, access to justice, that was explored in a fifth panel session.
5. It was evident, in the third working session, through the increased participation by Member States, particularly from Africa and Asia, that promoting and protecting human rights as essential elements for creating an inclusive society in which older persons participate fully and without discrimination, continues to be an issue of interest and importance to Member States. The number of civil society organisations in attendance also rose significantly, along with the level and quality of their interventions and documentary submissions.

6. In their general statements, several countries expressed that existing international human rights standards and principles apply to older persons, including the right to health, social security as well as the prohibition of violence and discrimination, and that current deficiencies in the protection of the rights of older persons could be addressed by more effective implementation of these existing mechanisms. Delegations highlighted the importance of sharing best practices and considering how to build on available initiatives at the national, regional, interregional and international levels to address the main causes of protection gaps and age discrimination.

7. Several other countries focused their attention on the need to ensure a more comprehensive protection of the human rights of older persons, pointing out to existing normative and protection gaps. Some delegates stated that while existing human rights conventions offer considerable potential to promote and protect the rights of older persons, this potential was not being tapped, and that the existing international framework is not specific enough to address and provide enough protection for older persons. Speakers called for drafting a new international instrument, a United Nations convention on the rights of older persons, to provide a binding treaty that identifies the rights of older persons as well as the obligations of State parties to the convention to promote, protect and ensure those rights.

8. Some representatives of civil society organizations and networks cautioned that age discrimination and ageism are widely tolerated across the world and that older persons continue to be highly vulnerable to abuse, deprivation and exclusion. They called for the establishment of a convention on the rights of older persons, as the only real means to ensure the protection of the human rights of older persons. Civil society organizations and networks urged Member States to continue and support the dialogue through the OEWG and to ensure that the needs of older persons are reflected in national and international development policies, as well as in the planning and delivery of basic social services at all levels.

9. The option of appointing a special Rapporteur or independent expert of the Human Rights Council on the rights of older persons was welcomed by several Member States. A Special Rapporteur could be entrusted to examine, monitor and advise on the situation of older persons and to establish standards and good practices that target full and equal enjoyment of all human rights and fundamental freedoms by older persons without discrimination.

10. Mainstreaming the rights of older persons within existing human rights framework, including treaty bodies, universal periodic review processes, special mandate holders, as well as within the activities of United Nations entities that have adopted a rights-based approach, were mentioned by many speakers. Delegates at large called for the greater involvement of national human rights institutions and for intensified cooperation with civil society actors as well as the private sector, for the improvement of the condition of older persons.

11. Delegations and representatives from civil society organizations and networks agreed on the urgency of the situation of older persons, and the need to continue meaningful and comprehensive discussions within the United Nations on ageing issues; mainly through the essential work of the OEWG on Ageing, as well as the important contribution of the 51st session of the Commission on Social Development in 2013, in

which the results of the second global review and appraisal of the Madrid International Plan of Action on Ageing (MIPAA), will be conducted.

III. Summaries of Panel Discussions

Second meeting of the Third Working Group

21 August 2012 (p.m.)

Panel 1: Age Discrimination (moderated by Mr. Charles Radcliffe, Chief of Global Issues Section at the Office of the High Commissioner for Human Rights)

12. **Mr. Alejandro Morlachetti, Professor of Law at the University of Buenos Aires in Argentina**, informed the Working Group about non-discrimination clauses in international human rights treaties, namely the Committee on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD), and about non-discrimination of older persons in the Inter-American system. He pointed out that the American Convention of Human Rights does not list age among the grounds of discrimination. While age is explicitly mentioned in various general comments of international human rights treaties, the question remains whether this is sufficient on normative grounds. In addition, he noted that general comments have been considered by Member States as non-binding and that Member States rarely include references to older persons in their reports to treaty bodies. In conclusion, Mr. Morlachetti stated that an international convention on the rights of older persons would (a) reaffirm basic principles of equality and non-discrimination; (b) establish age as a class that deserves protection; (c) clarify States' responsibilities, (d) provide a framework for action; (e) recognize and protect older persons from multiple discrimination; (f) provide a mandate to adopt special measures; and (g) ensure a reporting and accountability mechanism.

13. **Ms. Louise Richardson, Vice-President of AGE Platform Europe**, addressed age discrimination in Europe. Despite existing European Union legislation, age inequalities are not dealt with adequately throughout the European Union. She noted prevailing discrimination in employment and in advertising job openings as well as barriers to access to financial services and to complimentary health insurance, while also providing good practices in these areas. She spoke about multiple discrimination with regard to age, and exemplified that by citing discrimination against older women, older migrants and older lesbian, gay, bisexual, and transgender persons (LGBT). To address these issues, Ms. Richardson provided the working group with recommendations, namely to (a) adopt effective legislation to combat age discrimination in access to essential goods and services; (b) combat stereotypes about older workers; (c) consult non-governmental organisations to identify perception of fundamental rights; (d) enhance the understanding of barriers encountered by older persons facing multiple discrimination; (e) monitor age discrimination in access to healthcare and financial services; and (f) remove barriers to the 'silver economy.'

14. **Ms. Susan Ryan, Age Discrimination Commissioner of Australia**, presented the experience of her mandate regarding age discrimination. She discussed discriminatory attitudes and workforce barriers facing older persons in Australia, including discrimination in employment, workers' compensation, as well as income protection issues. Ms. Ryan argues for the need for an older workforce in Australia, in order to (a) meet labour market requirements; (b) accommodate an increase in the pension age; and (c)

reduce the costs of ageing to the economy. She noted that the Australian Law Reform Commission has been tasked with inquiring into Commonwealth laws that discriminate on the basis of age, including superannuation law; family assistance; child support; social security law; employment law; insurance law; compensation laws; and any other relevant Commonwealth legislation exempt under the Age Discrimination Act 2004. Ms. Ryan called for age healthcare reforms, and recommended (a) the incorporation of indicators to monitor the implementation of consumer directed care; (b) the implementation of advance care training programmes; (c) development of disaggregated indicators, at least on the grounds of sex, race, ethnicity, sexuality, socioeconomic status, and place of residence; (d) improvement of the effectiveness of 'Broadband for Seniors Initiative' to ensure that older persons are confident internet users; as well as (e) human rights training for health workers. Ms. Ryan emphasised for the need to develop materials on financial literacy older persons, and concluded by calling for the consolidation of five federal anti-discrimination acts in Australia to simplify relevant laws and extend protections to older persons on the grounds of sexual orientation and gender identity.

15. **During the interactive dialogue**, several Member States and civil society organizations emphasized the centrality of areas of age discrimination as outlined by the panellists. Some delegates provided examples of policy responses that were initiated by their governments, such as age anti-discrimination laws addressing employment and the labour market, measures to overcome stereotypes of old age, measures for age-friendly communities and legislative action to ensure access to goods and services. Others informed the Working Group about the upcoming second ministerial conference in Vienna and ongoing negotiations to adopt a Ministerial Declaration. The United Nations regional commission ECLAC spoke about the results of the regional intergovernmental conference on Ageing in Latin America and the Caribbean, which was held in San Jose, Costa Rica.

Third meeting of the Third Working Group

22 August 2012 (a.m.)

Panel 2: Autonomy, Independent Living and Healthcare (moderated by Ms. Najat El Mekkaoui, member of the Morocco National Council of Human Rights, and an expert on social protection for older people)

16. **Ms. Amanda McRae, Disability Rights Researcher at Human Rights Watch**, organized her presentation around three main topics: (a) defining palliative care; (b) exploring how palliative care affects older persons; and (c) linking human rights to palliative care. Ms. McRae presented specific examples from the field, namely India and Ukraine. In her recommendations, Ms. McRae stated that existing international frameworks of the human rights for older persons have fallen short of securing older persons' rights to the highest attainable standard of health, including access to palliative care. She called for a legally binding standard, including an explicit reference to the right to palliative care.

17. **Ms. Athina-Eleni Georgantzi, Legal and Research Officer at AGE Platform Europe**, focused her presentation on autonomy and independent living in relation to different care settings. She highlighted insights on the reality of barriers that older persons face in the enjoyment of their human rights. Ms. Georgantzi also discussed the need to move toward a rights-based approach to ageing. She concluded that the option of an international convention would: (a) enhance public awareness on the rights of older persons in terms of autonomy and independent living; (b) promote a social model of

ageing and strengthen visibility of older people as rights holders; (c) close loopholes in existing legal frameworks; (d) give member States a concrete obligation to respect, protect and fulfil these rights; and (e) act as a catalyst for data collection and age-appropriate policies, ensuring that there are no discrepancies in the understanding and enforcement of older persons' rights.

18. **Mr. Horst Krumbach, Nursing Home Administrator and CEO of Generationsbruecke Deutschland**, called for paying more attention to elderly citizens, especially care recipients, and their needs. He explained how Generationsbrücke Deutschland initiates, directs, and supervises regular meetings between nursing home residents and groups of school children with the aim to enhance long-term quality and enjoyment of life of all involved, especially of dementia patients, and raise young people's awareness of the lives and needs of older persons.

19. **During the interactive dialogue**, several delegations and civil society representatives reiterated the importance of public health services and preventive strategies in ensuring autonomy, independent living and wellbeing of older persons. There was an emphasis on the need to identify and reduce discrepancies at the national, regional and international levels. Several delegations and civil society representatives called for a rights-based approach to health, with special attention to gender, disability, ethnic origin and area of residence. Specific topics raised included intergenerational dialogue and solidarity; long-term care and care provided at home; the need to respect the autonomy, will and preferences of older persons; as well as the need for considering the overlap between old age and disability from a social model perspective to avoid double discrimination. Also highlighted were challenges relating to the shortage of qualified medical staff, especially in rural areas where older people have limited mobility, in addition to the need for capacity building of facilities and personnel, including informal caregivers, to meet the special needs of older persons.

Fourth meeting of the Third Working Group

22 August 2012 (p.m.)

Panel 3: Life in Dignity, Social Security and Access to Resources (moderated by Louise Richardson, Vice-president of AGE Platform)

20. **Ms. Anne-Mette Kjaer Hesselager, Head of Section, Law and International, Danish Ministry of Social Affairs and Integration**, informed the working group that the commitment for social security in Denmark is underpinned by the international framework, including various United Nations conventions and the Madrid Plan. As pointed out in the European Report on Development 2010, universal access to basic social protection is feasible and affordable. The Danish Consolidation Act on Social Services stipulates that all adults with impaired physical and mental function shall receive necessary assistance based on an individual needs assessment. Long-term case services cover assistance with personal hygiene, getting in or out of bed, or getting dressed. Practical assistance at home may be assistance with cleaning, laundering or shopping. In addition, palliative care and rehabilitative services are available for older persons in Denmark. The overall policy approach to demographic ageing in Denmark rests has three elements: (a) fully utilize the potential of civil society in the social sector; (b) support older persons' opportunities to stay longer in the labour market; and (c) invest in new solutions to long-term care, including welfare technology. As a result, legislation on social pension was amended in 2008 to give pensioners incentives to work. Overall, Denmark has developed a very elaborate social protection model and is focusing on adapting it to the changing demographics of the coming generations.

21. **Mr. Alejandro Morlachetti, Professor of Law at the University of Buenos Aires in Argentina**, gave a presentation centred on adequate standard of living, right to social security and right to work. He pointed out that adequate standard of living for older persons is addressed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and for persons with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD). Likewise the right to social security is based on provisions in various international legal instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination against Women (CEDAW) and the International Labour Organisation (ILO) conventions. General Comment 19 of the Committee on ESCR states that social security should cover sickness, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans. The Special Rapporteur on human rights and extreme poverty highlighted that contributory systems of social security accentuate gender inequalities with older women more likely to receive lower pensions. The right to work has been enshrined in the UDHR, CERD, CEDAW, CRPD and ICESCR. Despite the mentioning of these issues in various instruments, a more coherent approach could be considered in relation to older persons. Mr. Morlachetti provided the working group with recommendations in this regard: (a) with regard to the right to work, define clear standards regarding age, particularly regarding the parameter to assess the justification for age limits; and (b) consider clear standards, ideally a binding instrument in order to advance understanding of the implications of the right to social security.

22. **Ms. Najat El Mekkaoui, member of the Morocco National Council of Human Rights**, addressed ageing, resources and poverty in Morocco. The country has one of the lowest levels of pension benefits and health insurance in the Maghreb. Only 16% of older persons receive a pension benefit, 83% are illiterate and 83.7% have no health coverage, more than 58.9% have chronic illnesses and for 58.6% their children are the only source of support. There are four public pension schemes and two professional pension schemes. Currently, pension reform is under discussion. A plan for older people was adopted in 2010 and the pension income doubled from 1996 to 2011. In addition, action to reduce poverty was taken, social housing was enhanced and the Government plans to increase the percentage of the population with health insurance. Ms. Mekkaoui's recommendations to address these issues were: (a) social protection coverage for all workers (formal and informal); (b) a comprehensive pension reform; and (c) a better understanding of the effectiveness of pension and health systems by collecting more disaggregated data.

23. **During the inter-active dialogue**, some Member States and civil society organizations deliberated on issues related to addressing cuts in social security, the right to sufficient income for older persons, as well as inclusion of the informal sector and women regarding basic income in old age. Other issues raised included active societal participation of older persons after retirement, such as volunteering; best practices regarding employment of older persons; older migratory workers; and an international legal instrument and how it could define requirements and responsibilities by governments.

Fifth meeting of the Third Working Group

23 August 2012 (a.m.)

Panel 4: Abuse and Violence (moderated by Ms. Maarit Kohonen Sheriff, Deputy Head of Office and Chief of Geographic Issues of the Office of the High Commissioner on Human Rights)

24. **Ms. Nena Georgantzi, Legal and Research Officer, AGE Platform Europe**, noted that combating ageism and gender discrimination is key to any policy targeting elder abuse. She noted the need for a common definition enshrined in an international human rights instrument to build a commonly accepted definition, as it would help the screening of the different forms of elder abuse and would have a stronger preventive effect. Ms. Georgantzi stated that while elder abuse is on the European Union's agenda, legal protection of elder abuse remains very much fragmented across the region's member States and rarely does it target older people. Moreover, soft-law approaches to elder abuse entail protection gaps. Ms. Georgantzi called for a more comprehensive European Union-wide response, which is also binding in nature. She concluded that only with raised awareness, a common analysis and vision on elder abuse, a better coordination and exchange of information between stakeholders, as well as improved data gathering would there be an enabling environment where older persons are able to enjoy claim their rights.

25. **Dr. K.R. Gangadharan, President, International Federation on Ageing, as well as the Chairman of Heritage Foundation in Hyderabad India**, shared his experience with the Heritage Hospital, a multi-specialty geriatric healthcare facility in Hyderabad, where he noted the prevalent belief that older persons are perceived as worthless in today's fast-paced, globalised and increasingly industrialized world. Dr. Gangadharan shared his concerns about the scope of violence and abuse of older persons despite the growing number of international forums on the prevention of elder abuse. He highlighted poverty, illiteracy, rural dwelling and feminisation as potential factors for high risk to such abuse. Among existing legal protection against elder violence, India has developed a national programme for the health care of the elderly. Additionally, in 2007, the Maintenance and Welfare of Parents and Senior Citizens Act was adopted, and is currently under revision. Since 1999, there is a national policy on older persons. The challenge, Dr. K. R. Gangadharan pointed out, is the lack of implementation of the policies in place, rather than lack of legal protection.

26. **Ms. Claudia Martin, Co-Director of the Academy on Human Rights and Humanitarian Law**, highlighted that existing human rights law are currently too fragmented, with regard to the protection of elder persons against abuse and violence. The existing legal framework is particularly flawed for cases of elderly abuse or violence that do not fall into cases of violations based on gender (CEDAW), disability (CRPD), the right to liberty (ICCPR) or freedom from torture (ICCPR, CAT). As such older persons are highly vulnerable to abuse that could take place in the context of institutional care. The issue of treatment without consent is also highly common among elders and not adequately covered by human rights law. Relevant reports by Special Procedures also represent a valid source of references on the scope of vulnerabilities older persons face.

27. **Mr. Bem Angwe, Executive Secretary of the National Human Rights Commission in Nigeria**, presented the reality of older persons in Africa, and more particularly in Nigeria. He started by comparing the experience of older persons in Africa

and in India, which happen to have a lot in common. However, the African context presents more alarming issues. Poverty as well as HIV and AIDS were highlighted as the two main factors to explain the difference between past and present experiences by older persons. The reality of older persons has largely degraded, from elders being respected and serving in their communities as mediators, to experiencing increasing amount of violence and abuse today, especially older women. Dr. Angwe presented several examples of abuse and violence, including gang rape, which are increasingly reported in some regions of Africa. In the past year, around five hundred older women were murdered in Tanzania following accusations of witchcraft. In other situations, older persons loose control of their property and/or financial resources. The African Union has been increasingly concerned about vulnerabilities linked to elder persons, and is currently negotiating an Optional Protocol to the African Charter on Human and Peoples' Rights that would protect them from violence and abuse.

28. **During the inter-active dialogue**, Member States and civil society organisations noted that violence and abuse against elders are not only about demographic change, but also about evolving societal norms. They highlighted the role of communities as both protectors and perpetrators of violence. Tackling the issue of elder abuse not only entails identifying normative gaps, but also identifying knowledge gaps among societies. Delegations called for the need to sanction and eradicate any kind of abuse of older persons through strengthening judicial mechanisms to prevent violence or discrimination against them, bearing in mind the associated factors related to the vulnerability of older persons including older women and vulnerable economic or ethnic groups. Speakers recalled the necessity for Member States to implement current relevant elder protection policies.

Sixth meeting of the Third Working Group

23 August 2012 (p.m.)

Panel 5: Access to Justice (moderated by Ms. Jill Adkins, Attorney and Consultant at Age Rights International)

29. **Ms. Claudia Martin, Co-Director of the Academy on Human Rights and Humanitarian Law**, pointed out that access to justice is fragmented, but consists of three major elements, namely (a) protection of due process, which could be found in all human rights treaties and is not group-specific; (b) right to effective remedy, which protects only civil and political rights, but does not extend to the crucial economic, social and cultural rights of older persons; and (c) right to liberty, which as a standard in its current definition does not assist older persons. Ms. Martin identified major rights gaps in current international conventions, namely: (a) gaps in the areas of legal capacity and guardianship; (b) gaps with regard to opportunity to give free and prior consent; (c) gaps concerning compulsory institutionalisation; (d) gaps regarding abuse and violence; and (e) gaps concerning continued incarceration and death penalty. Ms. Martin noted that access to justice should also include preventive mechanisms.

30. **Mr. Charles Sabatino, Director of ABA Commission on Law and Ageing**, stated that an Access to Justice Initiative began in 2010 by the U.S. Department of Justice, and accordingly set forth three principles of access to justice: (a) promoting accessibility by eliminating barriers that prevent people from understanding and exercising their rights; (b) ensuring fairness by delivering fair and just outcomes for all parties, including those facing financial and other disadvantages; and (c) increasing efficiency by delivering fair

and just outcomes effectively. Ms. Sabatino stated that access to justice also requires having knowledge and awareness of the full range of rights of older citizens, having reasonable pathways to exercise those rights, and having reasonable legal resources and self-help avenues of redress to remedy and prevent the loss of those rights. Elder law rests on underlying values and goals as autonomy, dignity, and quality of life, and concentrates around three issues, namely housing, financial well-being, health and long-term care. Mr. Sabatino turned to examples of inadequacies in both normative law and implementation: legal assistance to lower-income persons; adult guardianship; elder abuse and exploitation; age discrimination; courts and prisons and ageing prisoners; and voting rights.

31. **During the inter-active dialogue**, some Member States and civil society organizations raised several related issues including: the possibility of out-of-court conflict resolution to avoid legal confrontation; the possibility that the OEWG on Ageing develops tools to advance access to justice for older persons, as well as provisions that could be used for an international legal framework; and the possibility of an international human rights instrument to address the normative gaps with regard to access to justice, good practices of national ombudspersons, and dementia and guardianship. While human rights law applies to persons of all ages, some speakers felt that a convention on the rights of older persons would specify issues with regard to access to justice. Some existing regional and international legal instruments address access to justice and could be used as a blueprint.

IV. Closing Remarks by Chair

32. In his closing remarks, the Chair summarized important themes and discussions addressed during the interactive panel sessions. He highlighted several proposals and suggestions that were put forward by Member States and civil society organisations.

33. The Chair stated that it was evident, that Member States continue to be interested in strengthening the protection of the human rights of older persons. In appreciating the opportunity to exchange views on ways to address this topic, the Chair noted diverging opinions that had emerged during the debate. Certain Member States felt strongly that the human rights of older persons are protected by existing instruments, and that focus should be placed on implementation through improved legal frameworks and building on existing national, regional and international instruments, with the understanding that the Madrid International Plan of Action on Ageing (MIPAA) is sufficient to protect the human rights of older persons.

34. The Chair noted that some Member States focused their statements on development and the need to ensure a more comprehensive protection of the human rights of older persons. Others stated that existing treaty bodies are already constrained with heavy workload and limited timelines, and therefore, could not be further burdened with the responsibility of addressing the human rights of older persons. Some Member States suggested calling upon existing United Nations Rapporteurs, while others recommended asking for special procedures from the Human Rights Council to seek recommendations on how to better protect and promote the human rights of older persons. The Chair also noted that certain Member States, as well as civil society organisations, called for the drafting of a new international instrument; a United Nations convention on the rights of older persons, to provide a binding treaty that identifies the rights of older persons as well as the obligations of State parties to the convention.

35. The Chair reassured official delegations and representatives of the civil society that their viewpoints would be reflected and taken into account. He emphasised the importance of the Open-ended Working Group in that regard, as well as the need to renew its mandate to continue to explore and deliberate on options for more commonly acceptable solutions to protect and promote the enjoyment of all human rights and fundamental freedoms by older persons without discrimination.

36. Having stated that, the Chair proposed that the future course of action on this issue be left for the Third Committee to decide at the forthcoming sixty-seventh session of the General Assembly.