

Chair's summary

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

First working session, 18-21 April 2011

New York, UN Headquarters, Conference Room 1, North Lawn Building

General overview

In December 2011, the General Assembly established an open-ended working group open to all States Members of the United Nations, for the purpose of strengthening the protection of the human rights of older persons by considering the existing framework on the human rights of older persons, and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.

Its first working session concluded on Thursday 21 April, after a four-day series of panel presentations and discussions about the current situation of the human rights of older persons. Expert panellists from different backgrounds, experiences and origin considered the existing international and regional human rights framework and mechanisms, offered information about recent developments, and identified and reflected on a number of gaps in the protection systems. The ensuing interactive dialogues led to identification of some measures to address them at the international level.

The session showed broad agreement among Member States, non-governmental organizations, United Nations agencies and entities, and independent experts about the need to discuss the protection and promotion of human rights for this large and growing sector of society. Overall there was recognition of the particular nature of some human rights challenges faced by older men and women that have thus far not been adequately addressed.

Also agreed was that significant gaps existed in the protection afforded to the human rights of older persons, including in current data collection but also on statistics and specific information provided by States at the international level to treaty monitoring mechanisms. Without these tools, it is harder to ensure effective monitoring and to assess the fulfillment of all human rights without discrimination. Delegations noted the need to tackle implementation gaps at the national and international levels and offered views on some measures to achieve stronger results. Some delegations also identified normative gaps and called attention to the weaknesses of a fragmented system in providing effective protection. Furthermore, some delegations, as well as NGOs and some experts, called for a binding instrument in addition to dedicated mechanisms and further measures to address these gaps.

DAY ONE, 18 April 2011

Current situation of the human rights of older persons

The Chair of the Open-ended working group, Ambassador Jorge Argüello (Argentina), opened the first working session by highlighting that the percentage of the world's population aged 60 or older is expected to double by 2050, to an unprecedented 21.7 per cent. He noted the compound impact on the human rights of older persons of age discrimination, neglect and violence. He expressed concern about the invisibility of persons over 60 years old around the world. He also stressed that that progress towards effective solutions can only be made through in-depth debate and understandings with broad support.

The first day of the session was well attended, with over 80 delegations in the room, as well as several United Nations agencies and non-governmental organizations. Seventeen delegations took the floor, one on behalf of the European Union, as well as UNFPA and three non-governmental organizations.

Member States generally welcomed the establishment of the Open-ended working group in light of the challenges they are facing with ageing populations. Several delegations welcomed the opportunity to consider the human rights implications of current and future demographic changes, as well as to share experiences, policies and practices.

A number of delegations acknowledged that men and women face specific human rights issues as they grow older, and raised concerns about age discrimination, neglect and violence. Some delegations noted existing obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the potential offered by the more recent Convention on the Rights of Persons with Disabilities (CRPD). Some delegations also referred to other international instruments under the auspices of the International Labour Organization (ILO). Some delegations regretted that only two of these instruments contain any specific reference to older persons at all.

In terms of non-binding instruments, some delegations mentioned the 1982 Vienna International Plan of Action on Ageing, the 1991 United Nations Principles for Older Persons, and the 2002 Madrid International Plan of Action on Ageing (MIPAA), as tools for designing public policy specific to older persons. Some delegations remarked that they look forward to receiving the outcome of the review process of the Madrid Plan of Action on Ageing in 2012 as an opportunity for a coordinated approach to addressing the rights issue.

Several delegations acknowledged these instruments have not been sufficiently used or been consistently implemented. Some delegations considered they did not offer an adequate standard of protection to the human rights of older persons, and that further measures are needed, including a Convention.

Delegates expressed views on the need to devote attention to particular issues, such as for example those related to access to and availability of health services or further consideration of retirement ages. Some delegations made reference to the importance

of long term care, including as it relates to housing and transportation policies to enhance independent living, and the need to provide technologies and support devices to the elderly. For some delegations it was also important to stress active ageing and to recognize the contribution older persons continue to make to their communities and to society at large. Empowerment of older persons was observed as a central dimension of their human rights and participation in development.

The improvement of the living conditions of older persons and the respect of their rights implies also a reinforcement of international cooperation to fully accommodate the concerns of developing countries, which will face greater challenges in coping with their ageing issues. For instance, cooperation between regional human rights bodies is needed to exchange good practices.

In addition a few delegates referred to the negative impact of retrogressive measures on social protection schemes caused by the financial crises.

Some delegations as well as NGOs noted the fragmentation of existing human rights treaties, and noted that although the Madrid Plan of Action has some references to human rights it is a non-binding document. They called for stronger protection of a binding nature as a way of addressing current gaps in the international human rights system.

Some delegations called for a holistic approach to ageing is also necessary and other delegations noted that a Convention on the rights of older persons could facilitate such an approach. It would clarify State responsibilities towards older persons and improve accountability, but would also provide a framework for policy and decision making. In addition, a Convention could remedy the existing gaps in the current mechanisms and instruments and play a critical role in bringing about a paradigm shift that would help reframe older persons as rights holders rather than recipients of welfare and charity.

Most Delegations agreed that further discussion and analysis would be necessary to find widespread agreements in order to move forward in strengthening the protection of the human rights of older persons.

DAY TWO, 19 April 2011

Setting the scene: Existing international human rights framework and mechanisms

The second day of discussions was organized around two panels to examine existing human rights international instruments and mechanisms. Panellists included independent experts from the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities, as well as a former member of the Committee on the Elimination of Discrimination against Women. Also taking part in the panels were representatives from the Office of the High Commissioner for Human Rights, the International Labour Organization and the international non-governmental organization HelpAge International.

Mr. Craig Mokhiber, on behalf of the Office of the High Commissioner for Human Rights, offered an overview of the existing international human rights framework and mechanisms as they relate to human rights of older persons. Mr. Mokhiber

underscored that several provisions in human rights treaties apply to older persons as they are universal, but noted there is no specific instrument devoted to this segment of the population, and few existing instruments have explicit references to age. He reminded participants that two treaty monitoring mechanisms have developed dedicated standards to address the particularities of older persons and highlighted recent work by special procedure mandate holders in relation to older persons. He mentioned that while there are existing mechanisms and provisions, the protection regime at the international level appeared fragmented and there were critical issues not adequately addressed. Some of the substantive issues he underscored were multiple discrimination and the uneven focus on a few economic, social and cultural rights, with less attention devoted to civil and political rights.

Ms. Rocio Baharona Riera, member of the Committee on Economic, Social and Cultural Rights referred to the ICESCR and its Optional Protocol which provide for some human rights (such as social security, health and adequate standard of living) which are central to older persons, and set forth mechanisms for international protection. Ms. Baharona Riera noted that older persons are covered both by binding international instruments as well as by declarations of principles. She noted in particular General Comment No.6, on economic, social and cultural rights of older persons (1995), which constitutes the first treaty-body document specifically addressing the rights of older persons. She also flagged two more recent General Comments, No.19 on the right to social security and No. 20 on non-discrimination, the latter addressing age-related discrimination as a prohibited ground under the Covenant in several contexts. She noted that older persons were unlike other vulnerable groups who are protected by a specific convention. She regretted that despite a clear need, there are still insufficient reliable indicators to monitor the protection of older persons over time. She concluded by highlighting that in the last decade, some countries had started to introduce specific laws and public policies to protect older persons. These initiatives are much broader than simply addressing non-discrimination of older persons. She stressed the role of Ombudsperson and National Human Rights Institutions in monitoring the situation of older persons in light of national legislation and policies.

On behalf of the International Labour Organization, Ms. Mairangels Fortuny stressed the importance of Older Workers Recommendation, 1980 (No. 162). She highlighted the view of the ILO about centrality of employment promotion, with consequences for all age groups. In this regard, she stressed the need to address the “youth employment and « the lump of labour » fallacy”. She stressed the critical need to combat prejudice and age discrimination, including through legislation. She also focused on better working conditions, including fostering employability and lifelong learning and adapting working time and flexible pathways to retirement.

Regarding social security, Ms. Fortuny said that the real challenge is that the majority of older persons have no access to social security. Only a minority of the world’s working population contributes to any pension scheme and consequently, only a few have and can afford access to health care services. She stated that unless action is taken, the coverage gap will worsen in the future: currently 63% of the world’s older persons live in less developed regions with the lowest social security coverage, and this percentage will increase to 78% in 2050. The majority will be in Asia, with more women than men not covered. Implementing a social protection floor could help to

realize the right to social security, effectively reduce poverty, enhance productivity and growth, facilitate economic change and secure social peace. Furthermore it has been demonstrated to be feasible and affordable for developing countries.

In her presentation, Ms. Amna Ali Al-Suwiadi, independent expert of the Committee on the Right of Persons with Disabilities, emphasised the point of increasing numbers of older persons who were often subject to social exclusion, inequality, discrimination and violence. She called for increased visibility on the issue and human rights protection for older persons in the same way as persons with disabilities. While referring to the various existing international human rights instruments and standards, she noted that very few refer specifically to older persons. She also noted the absence of a proper monitoring mechanism and data collection system on older persons. She hence called for the establishment of a binding international convention on the rights of older persons which would create a legal framework that defines their rights, identifies the responsibilities of Member States, the criteria and steps needed for their protection, as well as the creation of a data base on the rights and needs of older persons.

In her presentation, Ms. Ferdous Ara Begum, former member of the Committee on the Elimination of Discrimination against Women, focused on the most recent development on the rights of older persons: CEDAW General Recommendation No. 27. Addressing all aspects of older women's rights, this general recommendation acknowledged that the full development of women cannot be achieved without taking a life cycle approach, recognizing that the different stages of women's lives have an impact on the enjoyment of their human rights when they reach old age. Older women are the most vulnerable, facing more social stereotypes, while generally participating less in their societies and benefiting from fewer available opportunities. They are also more prone to verbal, sexual and psychological aggression, and financial constraints, and they are often facing multiple discrimination.

She noted that effective implementation of the general recommendation requires State's commitment towards the elimination of discrimination against older women through incorporating international standards into domestic legislation and practices. She also noted that general recommendation No. 27 refers only to women and noted that a strong implementation and monitoring mechanism at the international level could enhance and strengthen the overall protection of human rights of older persons.

Ms. Bridget Sleaf of HelpAge International noted that there was an urgent need to increase the protection of older persons from abuses, discrimination and marginalization. She referred to the multiple discrimination older persons are suffering from and the lack of international legal framework providing them with protection. Her presentation included comparative charts based on a review of all the treaty bodies and special rapporteurs' reports and recommendations since 2000 to illustrate the fact that a systematic approach was lacking and to point out how rarely attention was dedicated to the situation of older persons, in particular in the area of civil and political rights. In Ms. Sleaf's view, a new international instrument would be an essential measure to redress the current situation, to provide clarity for right holders and duty bearers and to make age discrimination legally unacceptable universally.

Another central challenge for older persons is living with dignity. The very process of ageing itself can threaten older people's dignity as they are perceived by others to be inherently less valuable to society. Independence, participation and autonomy are critical components of dignity. In particular, older persons should be perceived as active members of their societies and not only recipients of social protection.

In the ensuing dialogues after both panels, delegations reflected on a broad range of issues including social exclusion, economic insecurity, lack of adequate data on ageing issues and insufficient coverage of social security. Delegations brought to the fore the link between development and human rights, and recalled the importance of in-depth discussions about direct, indirect and multiple discrimination and its impact in the exercise of numerous rights. Some delegations noted that the open-ended working group offered an opportunity to standardize concepts which could then gain a universal dimension, while others cautioned about the substantive resources required on the part of governments to ensure implementation, resources which are lacking in many countries, especially in developing countries. In addition, there is very little attention paid in the international human rights framework to equality and non-discrimination and virtually nothing that addresses the multiple forms of discrimination that older people can experience.

Some delegations illustrated through country examples, a prevailing youth oriented and "ageist" culture that is widening and has led to a gradual exclusion, marginalisation and de-prioritization of older people's rights in many ways.

Some delegations as well as expert and non governmental organizations also stressed the importance of a dedicated binding instrument in order to offer effective protection to older people, including immediate obligations in regards to non-discrimination and guarantees of non-retrogression of all the rights protected. While there are articles in two treaties already ratified by a majority of States, and general comments that tackle older persons, these are fragmented and provide insufficient protection. Delegations observed that although there was a pressing need for such protection in developing countries with rapid demographic shifts, this is also an issue for developed countries where the economic crisis has led to retrogression in public policies with detrimental impact on older people.

One delegation noted that instead of further instruments, the best way to address some of the gaps identified would be to encourage the treaty bodies and human rights mechanisms to focus more on older persons and use existing instruments.

One delegation further noted the importance of NGOs participation in bolstering further awareness and visibility on the situation of older persons and their entitlements as rights-holders.

DAY THREE, 20 April 2011

Regional human rights framework, measures and mechanisms

On Wednesday 20 April, the two panels were aimed at analysing the work of the regional human rights systems in addressing the human rights of older persons, and also offered a glimpse of national experiences from the perspective of an independent

national human rights institution. Panellists included the Chair of the African Commission for Human and People's Rights, a senior lawyer from the Secretariat of the Inter-American Commission for Human Rights, as well as an expert from the European Human Rights System and from the Association of Southeast Asian Nations. Other panellists included the human rights advisor from the Pan-American Health Organization as well as a legal expert from the Scottish Human Rights Commission.

Presentations showed that in recent years regional human rights systems have been grappling with measures to strengthen protection mechanisms for older persons, including the consideration of dedicated binding instruments. A first illustrative example was offered by Ms. Reine Alapini Gansou, African Commission on Human and People's Rights. Ms. Alapini remarked that in 2007 the African Commission established a working group focused on the development of a Protocol on the human right of older persons, in light of the African Charter on Human and People's Rights global but rather vague protection of this population group. A draft project was submitted for consideration during the 48th regular session of November 2010. She noted that in the African human rights system, references to older persons are more explicit as compared to the international mechanisms, such as for instance in the Protocol on the Rights of Women in Africa, article 22, an instrument adopted in 2003. Ms. Alapini also noted that the African Court of Human and People's Rights offers a protection system for the present and future in the sense that it allows for individual communications under the existing provisions, a mechanism which has not yet been applied to older persons.

A second regional perspective was offered by Mr. Mario Lopez on behalf of the Secretariat of the Inter-American Commission for Human Rights. Mr. Lopez started his presentation by flagging that since 2009, Member States committed to promoting the drafting of an inter-American convention on the rights of older persons. More recently, on October 2010 the Permanent Council of the Organization of American States carried out a Special Session on the Rights of Older Persons, where several States called for a dedicated regional instrument. Mr. Lopez outlined the various channels offered by both the Commission and the Court to consider individual petitions, grant precautionary measures in matters of urgency, as well as to carry out country missions, to issue thematic reports and also to develop advisory opinions on issues arising from the interpretation of the Convention. Mr. Lopez noted that the Inter American Court has decided on very few but important cases involving issues explicitly linked to the rights of older persons, notably on social security and retirement, but also related to the State's duty to ensure the autonomy and continuing functionality of older persons, by ensuring the enjoyment of their right to adequate food, access to clean water and health care. Two other decisions have dealt with urgent measures for the protection of persons deprived of liberty, specifically regarding their life and personal integrity as well as the arrest and imprisonment of women over 65 years of age, in violation of that country's national legislation.

In her presentation Ms. Virginia Bras Gomes outlined some of the most important human rights instruments, of binding nature for the 47 Member States, including the European Convention on Human Rights, the European Social Charter and its Additional Protocol of 1992 offering specific protection for older persons in relation to social security. She also offered an overview of several political declarations and

other instruments which have explored specific issues related to a wide range of matters, both in relation to non-discrimination and to the framework of social policy, retirement, access to health services and pensions. Ms. Bras Gomes noted that pension policy reforms are currently ongoing and have been accelerated as a result of the economic crisis. Note worthy were also, in her view, the specific groups of older persons, such as older migrants, older persons with disabilities, the ‘oldest’ old and dependent older persons in that they require close attention from policy-makers, particularly in the realm of long term care and special measures of protection.

Mr. Makmur Sunusi, on behalf of Association for Southeast Asian Nations, offered considerations on the ageing profile of the region as well as ongoing discussions for policy design and implementation. Mr. Sunusi noted the cultural context and the need to consider the family structure when addressing ageing in south-east Asian societies. He noted there is an initiative to provide a common platform for the protection of older persons and increasing interest in the issue as a region where the growth of the older population is the fastest in the world. Mr. Sunusi made reference to the Brunei Declaration to Strengthen Caring for the Elderly adopted in 2010.

The presentation by Ms. Kavita Chetty on behalf of the Scottish Human Rights Commission illustrated in a concrete way the relevant role national human rights institutions play in bridging national situations to international standards and norms, and in responding to the specific claims brought to their attention. Based on a series of national consultations carried out at the onset of the work of this Commission, a participatory survey led to the current focus on older persons in social care services and their specific human rights challenges. As a result, emphasis has been placed on dignity, autonomy and participation in applying human rights standards to the unique forms of physical, mental and emotional vulnerabilities experienced by some older persons. Ms. Chetty discussed examples of the Commission’s work implementing the human rights based approach and strengthening both the empowerment of rights holders and the accountability and ability of duty bearers. Since in several countries NHRI have an independent mandate that allows them to access information as well as reach out to government officials, these independent bodies are already playing a role at the national level in shedding light to the rights of older persons.

Referring that a number of United Nations agencies have also taken steps to increase their attention on the human rights of older persons, Mr. Javier Vazquez, from the Pan-American Health Organization (PAHO) made reference to resolutions on health and ageing with explicit references to the human rights dimensions of the issue, and offered a comprehensive overview of the human rights such as the right to food, the right to housing, water and sanitation, freedom from torture, cruel and inhumane treatment and the right to privacy, which are all essential rights when considering the health of individuals. Mr. Vasquez also referred to some critical areas to be regulated in long term care facilities.

Various Member States considered that a convention on the rights of older persons would complement the existing regional mechanisms and instruments, in addition to protect and dignify older persons. Older persons also need to speak out: on the one hand they need to better organize themselves, but on the other hand they need to be consulted more often through a participatory approach. One Member State also emphasized instead that it is important to strengthen the implementation of the Madrid

International Plan of Action on Aging and the work of the Regional Commissions on human rights, instead of a new international instrument. Ms Chetty during the discussion noted that, in terms of regional frameworks, it is true that many remain untapped and that could be improved. However there is also inconsistency within these frameworks, which could be improved with a coherent instrument, such as a convention.

DAY FOUR, 21 April 2011

Identification of gaps and measures to address them

During the session on Thursday 21 April, the discussion focused on identification of gaps and measures to address them. The session was organized as a plenary discussion with Ms. Bras Gomes and Ms. Alapini Gansou as facilitators.

Ms. Bras Gomes opened the session by offering a summary account of the mandate of the open-ended working group in light of the several dialogues that had already taken place and proposed to consolidate the various gaps that had been brought up in four categories for ease of reference. These categories were: a) normative gaps, b) implementation gaps, c) monitoring gaps, and d) information gaps.

Twenty delegations, as well as five NGOs took the floor.

All representatives recognized the importance and pressing nature of the situation of older persons and committed to continue participating in the discussion at the August session of the Open-ended Working Group. Delegates welcomed the opportunity to consider different kinds of gaps and acknowledged the usefulness of the previous days of discussion in offering a first joint exercise to identify various non-exclusive and complementary proposals of various kinds.

Several proposals were put forward and discussed as responses to such gaps, while acknowledging that further consideration was needed and that they were not mutually exclusive by nature:

1. A new international convention on the human rights of older persons
2. A new Special Rapporteur or independent expert to study and report on the situation of older persons and make recommendations on how best to address the issue
3. More effective monitoring of the Madrid International Plan of Action on Ageing at the global level particularly during the second review and appraisal of the Plan
4. More effective implementation of existing instruments, including international human rights instruments, UN principles and plans of action
5. Mainstreaming older persons issues in the work of existing human rights mechanisms as well as at the national level in policies and programmes
6. Commissioning studies on various questions relating to the human rights of older persons

7. Strengthening national data collection, disaggregation and update, including with better statistics systems and the use of human rights indicators and benchmarks
8. Encouraging new general comments by those treaty bodies that have not yet adequately addressed the question of older persons
9. Strengthening national monitoring mechanisms (including of care facilities, as well as in private and public spheres)
10. Strengthening partnerships and better coordination among delegations, Regional Commissions, national human rights institutions, United Nations agencies and civil society organizations providing contributions and expert advice.
11. Developing a database on national focal points on the human rights of older persons with a view to collecting as well as disseminating information around the work of the OEWG
12. Supporting the participation of older persons and their organizations in the work of the Open-ended Working Group