

# **Rights for the Invisible: Older People and the Human Rights Project**

*We must build on the understanding that the wisdom and experience of older persons form a veritable lifeline in families and societies alike. Older people are intermediaries between the past, the present and the future.*

Kofi Annan in a statement on International Day of Families, 2002

## **Introduction**

This paper offers a critique on how older people are recognised in the Human Rights project. “Older people are now the world’s fastest growing population group: by 2050 one in five persons will be over sixty and for the first time in history people in this age group will outnumber children. The numbers of older people living in abject poverty are high and increasing” (HAI, 2000). Increasing numbers are becoming frailer and there are distinct features of being old that require attention over and above the implicit recognition given to all peoples indicated in the 1948 Universal Declaration of Human Rights. Older people are frequently more vulnerable for reasons of diminishing health, income, social inclusion and perception of being “useful”. The situation of older women gives rise to particular concern, as they tend to live longer than men do and with fewer resources and societal entitlements (IYOP, 1999).

Three key documents will be looked at: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Other Covenants will be mentioned as appropriate. In addition this paper will look at actions taken by regional organisations to promote and implement the rights of older people; and at a selection of countries to see how they are implementing the Programme of Action produced at the 2002 Second World Congress on Ageing.

“Old” is often defined by the “average life expectancy of a region concerned and ranges from the age of forty-six in Ethiopia to seventy-three in Venezuela” (UNHCR). Older people are defined in this paper as those being over the age of sixty, in line with the practice of the United Nations statistical services. The term “older persons” will be used in line with the General Assembly Resolutions 47/5 and 48/98.

## **2. Review of the Universal Declaration on Human Rights**

The historical context in which the Declaration was written is critical to the debate about the place of older persons in the human rights project. The Declaration emerged from the war-torn and gross acts of inhumanity of the Second World War. The violence committed against specific racial minorities became the foundation stone of the Declaration and in consequence concentrates on race related concerns:

*“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex; language, religion, political or other opinion, national or social origin, property, birth or other status.” (Article 2 UDHR)*

Klug (2004) argues that “other status” allowed for other dimensions of discrimination to be taken on board as they emerged. This later resulted in the Convention relating to the Status of Refugees (1951), Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) and the Convention on the Protection of the Rights of Migrant Workers and Members of their Families (1990).

Written in 1948, the world contained a considerably smaller proportion of older people than it has today; and the huge growth in numbers that we see today does not appear to have been contemplated. At the time of writing the Declaration it is also possible that issues concerning respect for older people were not even conceived as potential future problems. It was taken for granted that families and communities would look after “their” elders; older persons were a “scarcer commodity” thus rendering them the “wiser elders” of their communities. Over the last fifty years literacy rates and access to information through improved technology have also meant that older persons are no longer the key resource for knowledge in their communities. Older persons have become less “special”.

Article 25 incorporates older persons as having “the right to a standard of living adequate for the health and well-being of himself and of his family ...and the right to security in the event of ....old age or other lack of livelihood beyond his control”. Point 1 of Article 26 talks about everyone having the right to education but continues in Point 3 with “Parents have a prior right to choose the kind of education ...”. This could have implied at the time that older persons were thus excluded from the “Everyone has the right to education”.

Twenty years later the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, both adopted in 1966, still make no mention of older persons. Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) deals with “the right of everyone to social security, including social insurance” though, which can implicitly be seen to recognise the right to older-age benefits. State parties are required by the Covenant to do so to the maximum of their available resources. The CESCR notes in its General Comment No.6 “that while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited” (CESCR, 1995). General Comment No.6 does provide a rationale, however, on how ageing can be mainstreamed in the implementation of an international instrument, indicating how the various rights contained in the Covenant should be applied to older persons (Bridel, 2002). Other Committees could usefully apply this but to date no action has been taken to address the civil and political rights of older persons.

Article 1 of the 1986 UN Declaration on the Right to Development states the “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised”. Yet again older persons are not mentioned. Article 6 lists “race, sex, language or religion” for observation, promotion and encouragement and women are highlighted in Article 8.

There are currently no minimum core obligations that all State parties must meet, though thresholds on child mortality, life expectations, income per capita, food consumption and literacy are under discussion. To date, the European Social Charter (1961, revised 1996), is the only place in which any kind of threshold has been agreed: this is the minimum threshold on wages.

### **3. How do older people fit in the human rights project?**

The UDHR sets out core entitlements of all human beings in the civil, political, social, economic and cultural spheres. This instrument provides the moral basis for a wider range of international legislation.

#### 3.1. Age specific documentation, action and targets

UN concern on ageing came to the fore with the first World Assembly on Ageing, Vienna 1982, at which an International Plan of Action on Ageing was adopted outlining the rights of older persons. The focus of the Plan was on the protection of older persons. In 1991, the UN drew up a set of Principles for Older Persons to which a number of governments have signed up. These elaborate their rights in matters of independence, participation, care, self-fulfilment and dignity. They do not, however, have the status of legally enforced rights and “true commitment from member states to implementing them has been slow” (MacDonald, 2002).

1991 also saw the United Nations designate October 1st as the International Day for Older Persons and 1999 as the International Year of Older Persons. In creating the Day, the UN recognized older person’s contributions to development. In 1992, the General Assembly adopted global targets on ageing for the year 2001 and a brief guide for setting national targets. Also in 1992 the General Assembly adopted the Proclamation on Ageing in which it urged support of national initiatives on ageing to enable older women to be given adequate support for their largely unrecognised contributions to society and to enable older men to develop social, cultural and emotional capacities which they may have been unable to develop during their breadwinning’ years (CESCR, General Comment No.6, 1995).

In April 2002, in Madrid, a new International Plan of Action on Ageing was agreed at the Second World Assembly on Ageing. The thrust of this Plan is on empowering older persons and on development. The Plan does not commit governments or the international community to providing additional resources for implementation. This means ensuring that resources are made available from in-country poverty reduction programmes. It also lacks mechanisms for implementation and monitoring. On the more positive side it does emphasise older people’s rights and participation in development processes (MacDonald, 2002).

#### 3.2. Other U.N. Conventions and Protocols

Specific reference to older persons is rare in the other Covenants and Protocols but it can be argued that their inclusion is implicit in a number of documents. Paragraph 69

(c) of the UN Declaration on Violence Against Women states “[Governments shall] Treat all forms of violence against women and girls of all ages as a criminal offence punishable by law.”

The UN Guiding Principles on Internal Displacement (1998) refer to age in Principle 4, Point 1; and specifically include “elderly persons” within the list in Point 2 of those who shall be “entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.” These references are additional to “disability” and “persons with disabilities” which also appear in points 1 and 2. This is encouraging as it tacitly acknowledges that older people are either not automatically disabled nor will they only receive recognition if they do have a disability. Perhaps the 1982 Vienna Plan can also take some credit for providing the basis for inclusion of older people in the Guiding Principles, for the Vienna Plan states that: “As far as possible, groups of refugees accepted by a country should include elder persons as well as adults and children, and efforts should be made to keep family groups intact”.

The International Convention on the Protection of the Right of all Migrant Workers and Members of Their Families extends to family members within their territory and again “age” is included, (Articles 1 & 7) in the list of those to whom the Convention applies. Article 4 defines “family” as a relationship “...equivalent to marriage, as well as their dependent children and other dependent persons who are recognised as members of the family by applicable legislation...” Older people are not specifically mentioned at any point (only children and spouses are mentioned) but given that children are highlighted in Articles 29 & 30 it could be argued that they are only one element of a family and that the others could include older people. It can be assumed that the working and retirement ages of migrants will be the same as normally upheld in the country in which they are living, hence a migrant worker will not normally be over retirement age and hence considered to be an “older person”. Article 45 1 c & d allows for members of families to have access to social and health services and access to and participation in cultural life. The rest of article 45 specifically relates to children.

#### **4. Taking forward the Madrid Plan of Action**

The 1993 Vienna World Conference of Human Rights noted, “the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind.” It has been a struggle for Regions to develop Plans of Action as “no bloc is homogeneous” (Tomuschatt, 2003). There have been a number of successes though with both the independent Regional bodies, such as the African Union, and with UN backed initiatives, such as the Latin American and Caribbean Strategy.

##### **4.1 Regional programmes**

The African Union Policy Framework and Plan of Action on Ageing is the result of several years’ joint work by the African Union and HelpAge International’s Africa Regional Development Centre. The document, which received the final seal of approval at the AU Heads of State and Government session in Durban, South Africa

in July 2002, provides a comprehensive guide for member states as they develop national policies and programmes to meet the needs of older people. It identifies thirteen key areas of concern to older people, including rights, poverty, health, food and nutrition, employment and income security, crises, emergencies and epidemics and gender. It calls for the recognition of the rights of older people and their active participation in society and development (HAI, 2003). The plan “underscores the importance of the family and State working together to support older people...” (Mboya, 2002).

In Europe a Regional Implementation Strategy within the United Nations Economic Commission for Europe (UNECE) has been developed to take forward the overall goals of the Madrid Plan. The social and economic conditions affecting older people and ageing differ very widely across the region, (the UNECE region covers countries from the former Soviet Union to North America), which has presented problems in establishing a coherent regional implementation plan (CoverAGE, 2002). The UNECE plan points up the role and responsibilities of different societal actors (governments, civil society, businesses) in the implementation of their strategy. Yet, “The [Plan] seems a step backward from the Madrid Plan in that it is filled with an ‘economic problem’ approach to older people” (CoverAGE, 2002).

The Organisation of American States ‘Inter-American Programme to Combat Poverty and Discrimination’ emphasises economic growth “accompanied by the implementation of universal and selective social policies” (IAP Declaration, 1997). There is just one passing mention in point 8 of the Declaration of “the elderly” alongside a number of priority groups. Older people are not mentioned again in the whole document. There are sections in the Guidelines where reference is made to those living in poverty, promoting policies for financial security but pensions are not mentioned among the list of institutional and financial mechanisms.

Latin America and the Caribbean have developed their own regional strategy. Jose Guzman (2003) has noted that as well as economic insecurity and the lack of access to health care “the elderly suffer from their physical environment. In the cities, the transportation and housing are not adapted to their needs. This is physical abuse from the environment. The seniors are also victims of social abuse: they are discriminated against in hiring for jobs and sometimes families and friends abandon or are physically abusive to them”.

In order to improve the situation of older people in Latin America, an inter-agency group on ageing and expert-group meetings was developed. Following a series of meetings a Regional Strategy was announced at the end of a Conference held in Santiago de Chile, in November 2003. 30 Latin American countries attended as members and 7 countries were present as observers. The participants reviewed the protection of Human Rights for older persons. As a conference goal, they underlined the right to good living conditions for seniors.

*Without the support of the countries, change and progress are not possible.  
Each country has to find a better way to succeed. This is a public policy issue.  
The law has to be respected in the Latin America countries. The government  
has a role to play, and the civil society too.*

(José Miguel Guzman, Economic Commission for Latin America and the Caribbean, 2003).

The Macao Plan of Action was endorsed at the Economic and Social Commission for Asia and the Pacific (ESCAP) at its 56<sup>th</sup> session in June 2000. The Plan provides Guidelines that are to serve as a policy reference for governments. “The success of the implementation unequivocally lies in the protection of the rights of older persons as well as in recognition of their role, by the society as a whole, as contributors rather than as ‘mere’ beneficiaries of the development process” (ESCAP, 2000). The Plan takes note of the fact that issues related to “population ageing may not be among the top priorities of governments” and acknowledges that there is a negative image of older people. Countries are to set their own goals and to implement in accordance with their national circumstances. The introduction to the Macao Plan acknowledges “their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person in the equal rights of men and women ...” as stated in the Charter of the United Nations, and goes on to include, in Point 6 that “Societies have to promote and safeguard the rights and well-being of older persons. This includes the prevention of age discrimination and the promotion of productive ageing.”

#### 4.2 National Programmes

The UN International Plan of Action on Ageing, agreed in Vienna in 1982, called on each country to formulate and implement its own policy on ageing. “In 2002 HelpAge International reviewed the status of national policies on ageing in 79 countries. 29 of these had a national policy and a further sixteen were in the process of developing such a policy” (HelpAge International, 2002). Most are welfare-driven but a number have taken a rights-based approach. For illustrative purposes some approaches taken by different countries are given below. No international system for monitoring the Plans of Action exists but the UN Committee on Economic, Social and Cultural Rights in its own reviews of activities does comment and raise questions about older persons in the context of the ICESCR.

Consideration of the 3<sup>rd</sup> Periodic Report of Italy in 1993 sought further information about the application of Articles 10 and 12 in relation to older persons. What were the steps “taken to assist families support elder family dependents, in order to avoid their placement in old people’s home and hospital centres” and “to ensure that the increase in the cost of health care for adults. ...does not negatively affect [older persons] right to health?” It was noted in relation to Article 13 that Italy did not indicate whether education was provided for older people.

In November 2004 the British Government agreed to opt for a single Equality Commission spanning age, race, gender, disability, sexual orientation and belief. For the first time ever this will bring into being a public body charged with protecting and promoting the rights of older people to live free from discrimination, prejudice and ill treatment. No law against age discrimination exists but in October 2006 EU legislation will finally make it illegal in both public and private sectors. The introduction of the Human Rights Act into Britain in 2002 has now also resulted in some age cases being brought to the European Court of Human Rights.

Tanzania has a National Policy on Ageing which includes the eradication of age-based discrimination and a commitment to ensure that laws are drawn up that promote the well-being and rights for older people. In China, The Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly entered into force on October 1, 1996. The Law is enacted in accordance with the Constitution "to protect the lawful rights and interests of the elderly, to develop the undertakings related to the elderly and promote the Chinese people's virtues of respecting and providing for the elderly". Article 4 states that "Discrimination against, insulting, maltreating or forsaking the elderly is forbidden" and Article 43 provides older people with legal protection if any of "the lawful rights and interests of the elderly are infringed upon with an entitlement to bring a lawsuit to the People's Court according to law" (The Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly, 1996).

In Lebanon, there is no law regarding the status of the senior citizen. "Not only are the elderly not treated as 'senior citizens,' but they are often deprived of their basic rights as citizens and 'thrown away' in some home for the aged" (Houry, 2004).

South Africa's Select Committee on Social Services is eagerly working to create legislation to protect the rights of older persons. The current Aged Persons Act of 1967 later amended in 1999 is outdated and does not address the current needs of older persons. The new law would recognize the financial and support needs of aged caregivers of young children whose parents have died of AIDS.

In Cambodia, Article 47 of the National Constitution states, "children shall have the duty to take good care of their elderly mother and father according to Khmer tradition". (Steiner & Alston, 2000 p.348)

Seeking the protection and enforcement of the rights of senior citizens in India, the Supreme Court of India has issued a petition to the federal governments in Delhi and Uttar Pradesh. While the elderly population of India is estimated to reach 326 million by 2050, policies and programs for the protection of older persons, both at the national and state levels, are still "inadequate" and "remain on paper." The Supreme Court petition highlights the right to life, to dignity, and to equality, (New Delhi, India News, July 26 2004).

## **5. What is to be done?**

The unacceptability of discrimination against older persons is underlined in many international policy documents and confirmed in the legislation of the vast majority of States (CESCR, 1995). Discrimination is, however, tolerated in two specific arenas: mandatory retirement ages and access to education. These run counter to the spirit of Articles 23 and 26 of the UDHR that state that everyone "...has the right to work..." (Article 23) and the "...the right to education ...and higher education shall be equally accessible to all on the basis of merit." (Article 26).

### **5.1. A Typology of Discrimination**

The UN Economic and Social Council (ESC, 2002) has produced a typology of discrimination that focuses on the abuse of older people. Where the classic definition used to be contained to abuse of an individual by an individual, whether that is family, friend, formal or informal carer, the ESC has expanded this to institutional and systemic abuse. Increasing awareness of the rights of older men and women has led to viewing abuse of older persons as a human rights issue. The framework used by the Economic and Social Council proposes a three-pronged approach to dealing with such abuse: (i) drawing attention to the political issues of abuse of older persons and discrimination; (ii) challenging the abuse of economic and social means and entitlements of older persons; and (iii) considering effective responses to abuse and violence. However as abuse usually suggests there is a victim, this typology turns all older people into victims. As “victims”, the status of older people is further diminished and they in turn become regarded as people to care for: objects of charity rather than persons of dignity. Proponents of the rights of older persons indicate that the global problem of abuse of older persons will be addressed successfully when people’s basic needs and rights are met throughout the life course. Abuse in later life may be linked to the failure to achieve economic means to reach old age in dignity, and the lack of opportunities to do so.

## 5.2. A new Covenant for Older Persons?

Danielle Bridel, Chair of the Committee on Ageing – Geneva, makes the argument for establishing a separate Covenant on the Rights of Older People following in the footsteps of the Conventions on the Rights of the Child, on Women, Refugees and Migrant Workers (2002). Would this be helpful and could it work? Distinctive arguments were made and were successful for establishing separate Conventions and additional Protocols for other groups. For children, there were arguments of vulnerability based on their dependency; for women the arguments concerned exploitation and the consistent tendency to treat women as second-class citizens. It would be difficult to make such strong claims for older persons purely on the basis of their age. Older persons may become vulnerable because of poor health in later years and may be exploited as a result of their vulnerabilities. But to claim they are vulnerable *because* they are old renders older persons, as stated above, as victims and diminishes their standing and status in society. Sunstein (1995) argues that people can become rights-dependent, conceiving themselves as victims, thus militating against equal citizenship. Sergei B.Zelenev, (Chief of Social Integration Branch-Division for Social Policy and Development, Department of Economic and Social Affairs) argues that the vulnerability and dependence of old people does not come from their age, but from their environment: “They are victims of exclusion, discrimination and lack of social protection” and suggests that “National action must be taken to protect old people’s rights. ...Making an international code would not be so strong and would face difficulty in enforcement.”

The debates held for a separate Convention for Internally Displaced Persons suggested that there was a proliferation of treaties and that another would only serve to inundate countries with yet more paper and further excuses for inaction. It was argued that enjoining States to use the existing treaties would carry more weight. The same could be said for older people. There is no doubt that existing Covenants could



be used – the case for development, social, cultural and economic needs have all been made. The separate protocols for women and refugees implicitly cover older women and older refugees. But will the needs of older persons continue to remain marginalized within the broader Covenants? The Macao Plan unabashedly admits that older people are not a high priority. Relying on existing Covenants may not be substantial enough. The case needs to be made for highlighting the rights and needs of older people.

A practical outcome of a Convention could at least result in the creation of a UN Special Rapporteur. The Rapporteur for women, for example, places priority on developing guidelines for the practical implementation of international law relating to universal human rights for women. She plays a role in highlighting to the United Nations how it can improve its own internal accountability mechanisms in prioritising the rights of given groups and in promoting the human rights responsibilities of private sector actors (E/CN 2003). The existence of such a role for older persons could reap huge benefits. An alternative proposal has been to mainstream the rights of older persons in the reports of the Special Rapporteurs of the UN Commissions on Human Rights, along the same lines that the gender perspective is already integrated.

Returning to Bridel (2002), she does acknowledge however, that a proposal for a separate Convention “would not be met with much enthusiasm at the political level, since Governments believe that there already exists a complete human rights structure”.

### 5.3. The Mobilisation of Shame

“Shame” has been very much a part of trying to encourage countries in to good practice. Is this useful or even realistic to use in the case of older persons? “Not so long very long ago slavery and torture were fully accepted in most societies. Nowadays, both are considered violations of human rights and universally prohibited. The prohibition of racial discrimination seems to be moving in the same direction. Thus reaching such consensus is not a completely hopeless endeavour” (Baehr, 2001). With older persons seen as less important than other groups in society, is it likely that countries will be “mobilised by shame”? How much would have to happen before older people had that kind of draw? Every year in the U.K, the fourth richest economy in the world, thousands of older people die from hypothermia-related illnesses (Age Concern England, 2002). How many UK citizens are ashamed of this? What then does one appeal to? Natural rights, human rights, morality? Or is it only self-interest and economic forces, such as use of economic sanctions that will prevail in the end?

On a more hopeful note:

*... The transition to a positive, active and developmentally oriented view of ageing may well result from action by elderly people themselves, through the sheer force of their growing numbers and influence. The collective consciousness of being elderly, as a socially unifying concept, can in that way become a positive factor. (International Plan of Action on Ageing 1/para 32).*

## 6. Conclusions

The world's older persons are broadly invisible in the human rights project. The UN Principles for Older Persons (1991) do not have the status of legally enforced rights, and have not led to systematic action and monitoring in social development, human rights or ethical fields to guide practice and policy regarding older people. The current United Nations emphasis on integrating human rights and development has provided a solid basis for pursuing human rights for older persons. There are wide ranging debates about how best to afford older persons human rights with proposals ranging from integrating older person rights into all policies of a country, region and international body to establishing a separate Covenant on Older Persons. Support for establishing a separate Convention for older people is mixed: those in the international field appear more in favour while those on the ground at regional and national levels are arguing that real action and change must be taken and responsibility held at those levels. The reality is that the status of older people largely depends on the cultural and historical context in which they live.

Is there an answer to raising the visibility of older people? How much does it matter that older persons are mentioned or not in all the paperwork? If they are not mentioned they remain invisible and stand even less chance of having their rights recognised. But is it their "rights" which are important or their having the means to live a healthy, secure life that affords them a level of well being over and above basic survival? The answer lies in adopting a number of parallel paths. People have to be "visible" to gain some recognition in the system that provides support, health and social care, learning and leisure opportunities and so on. Countless times older persons just do not figure in the work of activists any more than it does with national, regional and international government. I would argue that a specific Convention would provide older persons with international recognition – that they matter. A Convention is not the be all and end all though; it is only a starting point. In parallel, those working on the ground need to have their awareness raised about the different needs and civil rights of older persons. If some official paperwork were able to provide a framework for ensuring that older people are not forgotten in the midst of competing challenges, then it would be worthwhile to produce a Convention. The arguments that it would be difficult to implement, monitor, evaluate are not really the issue. The point is that it is simply another trigger for action.

*International human-rights law is made by governments that act from political motives and the extent to which it is implemented by those governments is influenced by political factors (Freeman, 2002)*

Until the political, commercial and social interests that control the lives of older persons develop a wider respect based on justice rather than charity, older people will remain marginalized in the application of the human rights project. And until activists at the local level afford recognition to older persons, little will change in the daily experience and lives of older people.

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