

What are the options? Potential human rights instruments on the rights of older people

A number of suggestions have been made at the Open-ended Working Group on Ageing about creating and strengthening human rights instruments to better protect and promote older people's rights. Here we describe different options and what they would and would not do.

A new United Nations convention on the rights of older people

A UN convention would:

- **Be legally binding upon States on ratification.**
- **Provide governments with a legal framework, guidance and support** to help them protect and promote older people's rights in our increasingly ageing societies. This would directly impact on the situation of older people on the ground through domestic implementation of its provisions. For example, in 2010, the Permanent Representative of Colombia to the UN Human Rights Council stated that domestic legal codes on children, women and gender equality have their foundations in Treaty Body recommendations and conclusions.¹
- **Oblige governments to adopt non-discriminatory laws to protect against age discrimination.** For example, removal of discriminatory provisions in employment law would allow older people to continue to work in dignity.
- **Require governments to disaggregate all data** by age and gender and collect data on age-specific indicators.
- This would give legislators the tools they need to create policy that is more appropriate and better aligned to the specific challenges faced by individuals at different ages. In many countries, data is only collected by age ranges (eg 50–54, 55–59) up to 60. Data on people aged 60 and above is therefore merged with data on those aged 100, if collected at all.
- **Encourage governments to roll out national campaigns to eradicate discrimination** against older people. Taking proactive steps to ensure older people are treated in a dignified and respected manner can change negative stereotypes and attitudes that lead to discrimination.
- **Have the power to call for the creation of national monitoring mechanisms** which could further support and monitor government policies to improve realisation of older people's rights.
- **Require governments to maintain focus** on this group through the periodic submission on the situation of older people to the Treaty Body that monitors compliance.
- **Mainstream and ensure visibility of older people across human rights bodies.** For example, during the entire first round of the Universal Periodic Review process, only 31 recommendations out of 21,353 referred to older people. However, 726 recommendations were made related to people with disabilities.² Treaties therefore have a direct impact on the visibility of particular human rights issues and the subsequent action taken.
- **Have the capacity to address emerging concerns** around older people's rights that arise in the future through the drafting of General Comments or Recommendations by the Treaty Body.

- **Generate recommendations and guidance**, which civil society can work alongside governments to implement.
- **Guide human rights organisations and civil society** to understand and work toward better implementation of older people's human rights in their programmes.

A UN convention would *not*:

- **Impact on the lives of all older people without the goodwill and support of each government.** A convention would only be as good as the intentions of the States and actors making it real in the lives of older people. Though legally binding, there are limitations to how far it could be effectively enforced. Firstly, it would require the ratification and subsequent goodwill of the State to comply with its obligations. Secondly, the language of human rights conventions usually offers States some margin of discretion to choose measures to implement them. Thirdly, there are no effective sanctions for non-compliance with those obligations. Finally, many States fail to submit their reports on time and the only recourse normally available to Treaty Bodies is to provide information regarding non-submission to the General Assembly.

A new Special Procedure on the rights of older people

A Special Procedure would:

- **Be a thematic special rapporteur or working group** appointed by the Human Rights Council.
- **Be able to make country-specific visits** to discuss the situation of older people.
- **Be able to make country-specific recommendations** as a result of both country visits and investigated complaints which, in collaboration with governments, could create significant positive national legislative or policy change.³
- **Elaborate on and consolidate knowledge of current understanding** around older people's rights presenting information to the General Assembly and Human Rights Council.
- **Draft thematic reports** with non-country specific recommendations and observations that would help to build norms and consolidate international customary law on the rights of older people.
- **Receive and respond to urgent concerns** from civil society organisations.

A Special Procedure would *not*:

- **Generate legally binding recommendations** and so implementation depends on State goodwill.
- **Be able to make more than one to three visits** to different States each year.
- **Be granted access to a country** unless the State agrees to the visit.

A United Nations Declaration on the rights of older people

A UN Declaration would:

- **Be an international gesture of solidarity** with older people and validate their concerns that their particular challenges to full enjoyment of their rights are neither well-articulated nor understood.
- **Have the potential to outline in general terms the norms and standards governments should adopt** in relation to the rights of older people beyond the current appreciation of them being part of “other vulnerable groups”.
- **Have the potential to be cross-referenced by Treaty Bodies.**⁴

A UN Declaration would *not*:

- **Be legally binding** and therefore provide no additional obligation or incentive for implementation beyond the current documents devoted to ageing and older people such as the UN Principles for Older Persons and the Madrid International Plan of Action on Ageing.
- **Further articulate State obligations.**
- **Provide governments with specific guidance or outline obligations in detail.** Declarations are often very general in scope. The impact on older people will be negligible without significant efforts by civil society groups and very pro-active governments.

Mainstreaming older people’s rights in Treaty Bodies via General Comments

Mainstreaming would:

- **Result in a higher number of requests for better data** from States regarding older people. More request for data may encourage States to be more holistic in their approach to national data gathering and analysis, and create the possibility of showing improvements.
- **Result in the Treaty Body committee members themselves being more sensitive** to violations of the rights of older people, building their understanding and leading to a more nuanced approach.
- **Generate short explanatory texts** on specific issues related to older people.
- **Increase the visibility of older people in human rights texts.**

Mainstreaming would *not*:

- **Create a text that is considered to be legally binding by States.**
- **Create a consolidated text that articulates clearly and comprehensively States’ obligations** and responsibilities to protect and promote all the rights of older people.
- **Be guaranteed to be a priority by Treaty Body committees** who may not have the capacity or will to draft the text and have it adopted.
- **Be written by experts** who have a strong understanding on ageing issues.
- **Guarantee that older people’s rights would be significantly better mainstreamed across other human rights bodies and mechanisms** such as the Universal Periodic Review. General Comments and General Recommendations of the Treaty Bodies were referenced just four times in recommendations made to States throughout the first 11 sessions of the UPR.⁵

An Annual Day of Discussion in the Human Rights Council on the Rights of Older People

An Annual Day of Discussion would:

- **Make a public demonstration of commitment** from the international community to realising the rights of older people and provide appropriate space in the agenda to underscore the importance of ageing issues in the human rights field.
- **Build from the 2010 preliminary working paper on ageing and human rights by the Human Rights Council Advisory Committee (A/HRC/AC/4/CRP.1)** which noted that “since there is no international instrument that contains State obligations that are legally binding [on the rights of older people] implementation of such principles have remained weak” and that “there must be a systematic and comprehensive mechanism to protect the rights of older persons at the international level”. No further consideration of this report has been made.
- **Provide a regular forum** for independent experts to provide research and advice to Human Rights Council Members and other interested States.
- **Generate thematic studies of interest** on older people's rights.

An Annual Day of Discussion would not:

- **Provide any binding commitments** that would oblige States to better implement policies, legislation and practices that would positively impact on older people.
- **Be attended by all UN Member States**, nor would the recommendations and studies necessarily reach the appropriate ministries and departments in capital cities.

Notes

¹ Open Society Justice Initiative, Brookings Institution and UPR-Watch, *Improving implementation and Follow-up: Treaty Bodies, Special Procedures and the Universal Periodic Review. Report of Proceedings, November 22-23 2010*, March 2011, <http://www.soros.org/reports/improving-implementation-and-follow-treaty-bodies-special-procedures-and-universal-periodic> (Accessed June 2012)

² Searches and analysis were undertaken on the database of UPR-info, <http://www.upr-info.org/database/> (Accessed July 2012)

³ A study looking at 8713 communications sent by Special Procedures to States between 2004 and 2008, found that the State took steps to address the allegation in 18 per cent of the cases. This appears low, but that still amounts to 1620 proactive steps to change a situation. Sometimes those steps can be very significant. For example, the Special Rapporteur on adequate housing, alongside civil society and the government helped to stop the construction of a dam in Mexico which would have displaced thousands of people. Piccone T, *Catalysts for Rights. The Unique Contribution of the UN's Independent Experts on Human Rights: Final Report of the Brookings Research Project on Strengthening UN Special Procedures*, October 2010, <http://www.brookings.edu/research/reports/2010/10/human-rights-piccone> (Accessed June 2012)

⁴ The Committee on the Elimination of Racial Discrimination referred to a non-binding UN Declaration in its recommendations to the USA in 2008, stating “While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.” (UN Doc. CERD/C/USA/CO/6)

⁵ General Comment No. 24 of the Human Rights Committee and General Recommendations 21 and 19 of the Committee on the Elimination of Discrimination against Women were cited once each, as well as a very general recommendation to one State to bring domestic legislation into “full compliance with...the general recommendations of the Committee on the Elimination of Discrimination against Women”, www.upr-info.org/database/ (Accessed June 2012)

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