# Strengthening the Rights of Older People Worldwide: Building Greater European Support

***5-7 December 2012, Osnabrück***

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**HelpAge International helps older people claim their rights, challenge discrimination and overcome poverty, so that they can lead dignified, secure, active and healthy lives.**

**Strengthening the Rights of Older People Worldwide: Building Greater European Support**

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# Acronyms

| | |
|---|---|
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CRPD | Convention on the Rights of Persons with Disabilities |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| MIPAA | Madrid International Plan of Action on Ageing |
| NHRI | National Human Rights Institutions |
| NGO | Non-government Organisation |
| OEWG | Open-ended Working Group on Ageing |
| OHCHR | Office of the High Commissioner for Human Rights |

# Executive summary

> *A dedicated protection regime at the international level would have the greatest reach and prominence, and provide coherence to an otherwise fragmented, uneven and incomplete landscape of legal norms.*
>
> *Navi Pillay, UN High Commissioner for Human Rights, in her video address to the conference, 6 December 2012*

The year 2012 saw the basis of the international discourse on ageing shift from a purely social or development framework into a human rights framework. There is now clear consensus across the international community that older people do not always enjoy sufficient protection nor is awareness of their rights successfully promoted in all regions of the world.

On a regional level, the drafting of a new binding human rights instrument within the Organization of American States on the rights of older people commenced in 2012. Drafting on binding legislation continued in the African Union and a drafting group was assembled in the Council of Europe to consider the elaboration of a non-binding text.

On a global level, the third session of the United Nations Open-ended Working Group on Ageing (OEWG) enjoyed increased and more active participation of states from Africa and Asia, many of whom joined the call from some Latin American states for the international community to create a binding human rights instrument for older people within the UN framework. The OEWG had its mandate renewed at the 67th session of the UN General Assembly, and in 2013, it will discuss the potential provisions of a new legal instrument.

However, European states have remained sceptical. The conference, Strengthening the Rights of Older People Worldwide: Building Greater European Support, held in Osnabrück on 5-7 December 2012, was a timely initiative that brought together participants from 25 countries to discuss the reasons behind such hesitation. Participants – which included older people, UN experts, government officials, Members of the European Parliament, civil society actors, lawyers, and staff from ministries, National Human Rights Institutions and the Council of Europe – discussed next steps that can be taken by different actors to encourage greater understanding of the key issues, gaps in the current human rights framework, and the impact of those gaps on the lives of a growing number of older people in all regions of the world.

Participants at the conference emphasised that the current protective system for older people is inadequate. It was highlighted that:

- The fragmented and deficient nature of international legislation contributes to psychological, physical, sexual, and financial abuse of older people in all global regions.
- States should be obliged not only to protect the rights of older people but also to take positive, committed and forthright steps to promote the rights of older people and combat widespread and damaging stigma, social prejudice, and discrimination.
- A legally binding international instrument would ensure greater visibility of these issues, encourage greater accountability, and create an overarching legal framework on issues such as liability, consent, autonomy and independence, long-term care, rationing of services, state and individual obligations, guardianship, and access to justice.

# About this report

This report provides an analytical record of the rich conference discussions on key issues, challenges, legal gaps, and possible action points. It seeks to analyse the discourse in its entirety, including by capturing the viewpoints of participants. Selected quotations and case studies are attributed to individual speakers. Each section places emphasis on tangible action points and considerations for future action that emerged at the conference.

Section 1 provides context for the discussions, sets the scene, and describes the opening event, Global Ageing – Challenges for the 21st Century, held in cooperation with the Osnabrück Peace Forum. Section 2 looks at the arguments on the need for new international instruments to protect and promote the rights of older people. Key thematic discussions and action points in four parallel workshops are the focus of Section 3. Section 4 then considers the opportunities available for a range of actors to undertake concrete, time-specific actions towards developing greater understanding among European decision-makers for the need for increased protection and promotion of older people's rights.

# 1. Introduction: Contextualising the drive for developing international law on the rights of older people

> *There is still no explicit general prohibition of age discrimination in international human rights law, and no dedicated international protection regime for the human rights of older persons.*
>
> *Standards at the national level are often weak, or absent altogether. Not least as they relate to autonomy, an adequate standard of living, participation, freedom from violence, abuse, or neglect. So much remains to be done.*
>
> *Navi Pillay, UN High Commissioner for Human Rights, in her video address to the conference, 6 December 2012*

Today, 760 million people are over 60; by 2050, that number will have risen to 2 billion. In 1950, two years after the Universal Declaration on Human Rights was adopted, there were just over 200 million people over 60.[1]

The fact that older people would come to represent a large and growing constituency who suffer particular forms of abuse precisely on the basis of their status as older people was not explicitly recognised in the drafting of the first international human rights instruments – in which older people's rights and state obligations were not codified. Social and political structures and legislation have also not kept pace with the realities of demographic ageing. As a result, violations of the rights of older people have been unseen, ignored, obscured, and misunderstood.

Today, when older people challenge violations of their rights, they must search a fragmented system of generic human rights law and then seek clarification that they are included in the group protected by a particular law. This is challenging when there are almost no explicit references to older people in international law, and the elaboration of soft law over time has failed to meet the most urgent needs of this growing demographic.

This section provides an overview of existing legislation[2] to provide context for the rest of the report. This is followed by a summary of developments in 2012 that have generated a series of opportunities that demand engagement in the year to come.

## Existing standards in international human rights law

Three international documents specifically focus on older people, each of which tends to approach ageing from a development point of view.

- The **1982 Vienna International Plan of Action on Ageing** is the first international document on ageing, created by the first World Assembly on

Ageing, and later endorsed by UN General Assembly resolution 37/51.[3] It is developmental in focus, outlining principles and recommendations on areas such as the family, social welfare, health, and income security.

- The **UN Principles for Older Persons** were adopted by UN General Assembly resolution 46/914 of 1991. These Principles are preceded by a reaffirmation of faith in fundamental and equal human rights, however, this text is not binding.

- The **2002 Madrid International Plan of Action on Ageing (MIPAA)** was adopted by the Second World Assembly on Ageing, along with a political declaration, and later endorsed by UN General Assembly resolution 57/167.[5] It contains three priority themes: development, health and well-being, and enabling environments.

## Binding international law

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), use language taken from the Universal Declaration of Human Rights, stating that the rights contained within are applicable to all people "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*" [emphasis added]. Therefore, there is no explicit prohibition of discrimination on the basis of age.

***Box 1: Does the term "other status" provide adequate protection in international law?***

The term "other status" does not provide adequate protection in international law. The UN Secretary General made an analysis of the treatment of older people by Treaty Bodies, concluding that despite the existence of various documents on ageing, such as the MIPAA, states "are 'age-blind' in their human rights reporting".[6] States have **little incentive to report** on the situation of older people or the incorporation of their rights into national law, programmes or initiatives without its explicit inclusion in legislation. This omission also means older people are often left with **no recourse to justice or redress**. States can also **selectively interpret** "other status", and therefore, their obligations. Codification into international law would ensure legal clarity and limit the possibility of selective interpretation.

Only one of the seven other core international human rights treaties[7] prohibits discrimination on the basis of age, and two mention older people:

- Articles 1.1 and 7 of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** (ICRMW, 1990) prohibit discrimination on the basis of age.

- Article 11.1.e of the **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW, 1979) provides for the equal right of women to social security, including in older age.

- Article 25.b and 28.2.b of the **Convention on the Rights of Persons with Disabilities** (CRPD, 2008) require States to provide services to prevent and minimise further disabilities among older people, and to ensure older people with disabilities have access to retirement benefits and programmes. Four other provisions in the CRPD require "age-appropriate" or "age-sensitive" measures for people with disabilities.

The rights protected in these treaties are contingent on the older person in question being a migrant or part of a migrant's family, a woman, or a person with a disability.

### Soft law provisions

Treaty Bodies that monitor the implementation of treaties have affirmed some rights of older people in General Comments or General Recommendations.

In 1995, the **Committee on Economic, Social and Cultural Rights devoted General Comment No. 6** to the economic, social and cultural rights of older people. From that point, the Committee issued a further nine General Comments in which there was at least passing reference or particular paragraphs explaining the committee's perspective on state obligations relating to certain rights of older people.

Within a list of places where people live under custody or control, the **Committee against Torture noted in its General Comment No. 2** (2008) that institutions that care for older people fall within the definition of places of detention in which State parties have obligations to prohibit and redress torture and other cruel, inhuman and degrading treatment and punishment.

In 2010, the **Committee on the Elimination of Discrimination against Women (CEDAW) drafted General Recommendation No. 27** on the gendered nature of ageing and disproportionate impact of discrimination against older women. Three other CEDAW Committee General Recommendations include paragraphs on particular needs and vulnerabilities of older women.

### Special procedures

Two Special Procedures mandate holders have drafted reports which explicitly address older people within the context of their mandate. In 2010, the **Independent Expert on the question of human rights and extreme poverty** presented a report to the 14th Session of the Human Rights Council on older people and social security.[8] In 2011, the **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health** drafted a thematic study on the realisation of the right to health of older persons. This report was presented to the 18th Session of the Human Rights Council.[9]

## Developments in 2012

The year 2012 was designated as European Year of Active Ageing and Solidarity between Generations. States were encouraged to conduct regional 10-year reviews of their implementation of the MIPAA, the results of which will contribute to the global review to be presented to the Commission for Social Development in 2013.

However, 2012 also marked a shift away from understanding ageing solely or largely from a social or development perspective and into contextualising it within a human rights framework.

Drafting commenced on a binding instrument on older people's rights within the Inter-American system and the African Commission continued discussions on a relevant and binding draft protocol to the African Charter. The Council of Europe created a drafting group to elaborate a non-binding instrument.[10]

In August 2012, the UN **Open-ended Working Group on Ageing** (OEWG) met for the third time. The OEWG is the first and only UN Member State forum dedicated to "strengthening the protection of the human rights of older persons by considering the existing international framework...and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures".[11]

There is clear consensus through this process that older people's rights have been neglected. However, there is no consensus across all UN Member States about the best course of action to take to address this situation. Strong support

for an international convention and a UN Special Procedure mandate on the rights of older people has emerged primarily from Latin American Member States, and support is growing among African and Asian Member States. The general position of the European Union, however, is that there is no need for new human rights instruments and that existing mechanisms need to be better implemented.

In December 2012, in follow-up to the third session of the OEWG, the UN General Assembly voted and adopted Resolution 67/139 (A/RES/67/139) entitled **"Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons"**.[12]

The resolution is significant because it maintains and extends the mandate of the OEWG and calls for its fourth session to be held in 2013. The OEWG should at this time "consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons". The resolution requests the OEWG to present to the General Assembly "the main elements that an international legal instrument to promote and protect the rights and dignity of older persons should include, which are not currently addressed sufficiently by existing mechanisms". Finally, the resolution requests the Secretary General to submit to the OEWG by the fourth session, a compilation of existing international legal instruments that directly or indirectly address the situation of older people.

Prior to this, the Human Rights Council adopted **Resolution 21/23, "The Human Rights of Older Persons"**[13] without a vote, at the 21st Session. The resolution calls for the Office of the High Commissioner for Human Rights (OHCHR) to convene an inter-sessional public consultation on the promotion and protection of the human rights of older persons, which will likely be preceded by a call for written input. The outcomes of the consultation will be presented during the 24th session of the Human Rights Council in September 2013.

A number of opportunities on an international level have already been lined up for 2013, each with the objective of assessing the legal and other methods by which to better promote and protect the rights of older people. It will be important that the opportunities, which run parallel to one another, draw from each other and that states, civil society, and older people take full advantage of them.

***Box 2: Overview of state, NGO, and civil society opportunities for engagement in 2013***

1. Submission of written information, prior to the OHCHR inter-sessional consultation on the rights of older persons (January to March 2013).
2. Participation at the OHCHR inter-sessional consultation on the promotion and protection of the rights of older persons (likely to be in the second quarter of 2013).
3. Submission of information pertaining to the main elements that an international legal instrument to promote and protect the rights and dignity of older people should include, which are not currently addressed sufficiently by existing mechanisms. This must be submitted prior to the fourth meeting of the OEWG.
4. Participation in the fourth session of the OEWG in Ageing, New York (12-15 August 2013, to be confirmed).

## Facing financial challenges in moving forward

A major and understandable concern of some states has been the cost implications of moving towards adopting new instruments in the current economic climate. A call for budgeting to be more balanced and rights-based underpinned the opening event, Global Ageing – Challenge for the 21st Century, held on 5 December 2012 in cooperation with the Osnabrück Peace Forum.

Many older people believe that a shift in social norms has contributed to their worth being considered solely in financial terms. In combination with other factors, ageism is seen to have impacted upon national value systems, which then affect the way services and provisions are resourced and made available. This is especially so at a time of financial hardship. Provisions are seen to be oriented by way of a cost-benefit analysis, and so, money is disproportionately channelled away from older people since they have fewer years than other segments of the population to return the so-called investment.

While conference participants did not wish for value of older people, or of any person, to be perceived or determined along economic lines, it was also felt that older people's role in caregiving was grossly underestimated in different country settings.

*The amount of pension we receive, we return back in double to our children and the community through voluntary work.*

*Dr Mateja Novak, Federation of Pensioner's Associations of Slovenia*

Necessity, proportionality, urgency, legality, and fairness must be considered in any budgetary discussions without allowing decisions to be affected by discriminatory leanings. Many national government department budgets have not seen any cuts at all, and so, the real crisis for some parts of the population is not one of limited resources but of misplaced priorities and misallocation of funds.

The global financial situation is not a legitimate reason to abdicate responsibilities to protect and promote human rights of any sector of society. Human rights are universal and inalienable. Older people should not find themselves in a situation where violence and abuse occurs, decision-making rights are removed, or services denied purely on account of their perceived or actual older age. It was underlined that protecting and promoting the rights of older people should enjoy wide-ranging support, not least since it transcends ethnicity, language, gender, religion, sexual orientation, and other demographics. It is not enough to postpone the realisation of older people's rights, just as it would not have been appropriate to have postponed clarification of state's obligations to other demographic cohorts, such as women, children or people with disabilities.

Above all, it was felt that society had been slow in adapting to new demographic realities. Of course, implementing better standards and protection will take time and incur costs. Progressive realisation of these standards is a necessary reality that has a solid precedent within the disability sphere following the adoption of the Convention on the Rights of Persons with Disabilities.

*We need to shift to a different gear and see ageing as an opportunity and not just a time of being poor. Our current legislation is not appropriate, our wage agreements and our neighbourhoods have not been adapted. Everything has to be re-thought.*

*Henning Scherf, Head of the Expert Commission of the Federal Anti-Discrimination Agency to reduce age-discrimination*

# 2. The need for new international human rights instruments on the rights of older people

| | ***Panel 1: The importance of new human rights instruments for older people*** |
|---|---|
| *Moderator:* | **Bridget Sleap**, HelpAge International |
| *Panellists:* | **Craig Mokhiber**, Office of the High Commissioner for Human Rights<br>**Rashida Manjoo**, UN Special Rapporteur on violence against women, its causes and consequences<br>**Benny Spanier**, University of Haifa, Israel |
| | ***Panel 2: The universality of older people's rights*** |
| *Moderator:* | **Alexandre Sidorenko**, Global Ambassador for HelpAge International |
| *Panellists:* | **Eduardo Cáceres Valdivia**, APRODEH, Association for Human Rights, Perú<br>**Sigitas Povilas Krivickas**, Lithuanian Pensioners' Union "Bočiai"<br>**Edimund Revelian**, KwaWazee, Tanzania<br>**Louise Richardson**, AGE Platform Europe<br>**Lily Thapa**, Women for Human Rights, Nepal |

> *Standards related to the human rights of older persons need to be developed within a comprehensive framework recognising the indivisible, interdependent, and interrelated nature of the rights it seeks to protect. And adequate monitoring mechanisms must be in place to ensure the implementation of measures to protect, respect, and fulfil the human rights of older persons.*
>
> *Navi Pillay, UN High Commissioner for Human Rights, in her video address to the conference, 6 December 2012*

This section outlines two key issues at the heart of the need to develop new international human rights instruments on the rights of older people. First, the universality of rights violations experienced by older people; and second, the gaps in the current framework which facilitate or permit these violations.

## Universality of rights violations and discrimination

**Violations are universal in terms of their geographic and socio-economic reach.** Violations related to status as an older person transcend national borders, regional blocs, genders, and socio-economic backgrounds.

The universality of global ageing means that older people represent a large and growing constituency in all regions of the world. The global percentage of older people will have doubled by 2050, representing 1 in 5 of the total population.[14] Ageing is not a phenomenon that is constrained to specific regions.

As the global older population increases, so does the prevalence of violations against older people. According to Craig Mokhiber, Office of the High Commissioner for Human Rights, European statistics alone showed a 10 per cent increase in abuse and neglect cases last year.[15]

> *There is a growing body of evidence suggesting that in countries across the globe, the experience of old age is increasingly an experience marked by vulnerability, exclusion, discrimination, deprivation, and abuse.*
>
> *Craig Mokhiber, Chief of the Development and Economic and Social Issues Branch, Office of the High Commissioner for Human Rights*

Witchcraft or sorcery accusations that can lead to torture, sexual violence, and murder tend to target older women, many who are widowed or without kin. Older age is the key defining factor between living integrated lives within their community and being a target of abuse. Presentations at the session cited related practices affecting older women in Nepal, Papua New Guinea, and Tanzania. This is, therefore, not a cultural practice that can be deemed region-specific.

Extortion and other financial abuse impact older people regardless of region or socio-economic background. National legislation was found at times to support the enforced deprivation of land, property, or inheritance of older people, especially older women, in multiple regions and across socio-economic groups.

**Violations are universal in terms of where they take place within societal spheres.** The UN Special Rapporteur on violence against women, its causes and consequences, Rashido Manjoo, has been recording violations against older women that take place in the home, community, transnationally, and within state structures, as well as in regions which are said to have stronger regional human rights mechanisms or standards. Older people were noted to have incurred rights violations within state-run care homes, detention facilities, and hospitals in Italy, Tanzania, Nepal, and the United States.

> *Society boycotts older women who are widows.*
>
> *Lily Thapa, Women for Human Rights, Nepal*

**Violations are universal in terms of the impact on the victim.** They span discrimination, exclusion, deprivation, and abuse. They include insults, stereotyping and the damaging inculcation of social “norms”, physical abuse, sexual violence, torture, and murder. Older people are targets of financial crime, discriminatory provisions that limit access to services, and legislation that forcibly limits participation of older people in economic, political, judicial, or public life. Perhaps most ironically, laws and customs are enforced that deprive some older people of inheriting property or land, yet bequests widowed older women to the male kin of a deceased husband as if she were property herself.

## Gaps in the current framework

The current framework for protection and promotion of the rights of older people was seen to have normative gaps, implementation gaps, information gaps, and monitoring gaps.

> *We have to realise that the existing framework is not enough.*
>
> *Richard Blewitt, Chief Executive Officer, HelpAge International*

### Normative gaps

Fragmented legislation has created normative gaps that permit discrimination and abuse of older people despite the various instruments on national, regional, and international levels.

The absence of explicit provisions prohibiting age discrimination in the Universal Declaration of Human Rights and principal international human rights conventions, together with the lack of a dedicated international protection regime for the rights of older people, is perhaps the most obvious gap at the international level.

As discussed in the previous section, age-specific provisions in the ICRMW, CEDAW, and CRPD relate only to certain issues, such as social security, and only apply if you are a migrant or a family member of a migrant, a woman, or a disabled person.

Older people face challenges relating to legal capacity and equality before the law, especially in decisions relating to their health, home, housing, and financial matters. How guardianship, especially enforced guardianship, interacts with autonomy and the right to make informed decisions is unclear. Standards on assisted decision-making are lacking.

Access to justice for older people is a crucial issue which requires thoughtful consideration. Judicial systems have not kept pace with demographic change, and for a variety of reasons, legal processes are often difficult for older people to access and use. Not the least of these reasons is the length of time required for a process to unfold and subsequent time delays in the process of receiving redress. In the context of older age, a delay in accessing justice or judicial procedures means justice may be denied. These delays and the potential for processes to be intentionally lengthened, and how the principle of reasonable accommodation interacts with justice, constitute areas that do not currently have an appropriate age perspective in international law.

Normative standards related to liability are unclear. Abuse at the hands of a member of kin can be classified as domestic violence, but these cases are often age- and gender-blind, with cases relating to older men particularly invisible. Similar forms of abuse, but at the hands of a state carer, a volunteer, or in private care would need to be pursued along different lines, impacting on the development of comprehensive and cohesive case law.

The basis for which a company can restrict access to older people for financial and legal goods and services is unclear or arbitrarily decided, and there is enormous variety in how this is approached in Europe. Despite European directives, frameworks, and standards, older people are denied access to loans or insurance in a non-uniform way across the European Union. The same company can lower upper-age limits or price bands for the same services in different European countries. This constitutes a form of tolerated widespread discrimination on the basis of older age.

> *I am fully in favour of an extension to the anti-age discrimination directive in Europe beyond the labour market…There are other types of age discrimination, for example, in access to loans in the financial sector. The discussion on an extension of the directive has been slowed down by the financial crisis, but we will see it re-emerge.*
>
> *Vladimir Spidla, former European Commissioner for Employment, Social Affairs and Equal Opportunities and former Prime Minister of the Czech Republic*

Mandatory retirement ages as well as age limits on participation in judicial procedures as a judge or a member of a jury are also common forms of discrimination on the basis of older age. Their existence is a hangover from outdated chronological understandings of ageing, which do not take capacity into consideration. Finally, issues related to standards for end of life care, palliative care, and geriatric healthcare are undefined and confusing, especially in conjunction with principles of autonomy and the right to health and freedom from torture.

> *Older persons, even where capable of making their own decisions about their personal finances, property, and medical care, are often denied the legal capacity to do so.*
>
> *Craig Mokhiber, Chief of the Development and Economic and Social Issues Branch, Office of the High Commissioner for Human Rights*

Legislation is often confusing, fragmented, or even contradictory, and there is no independent, international body to adjudicate between differing interpretations. Older women are particularly vulnerable where there are legal gaps or inconsistencies. Rashida Manjoo noted that in some national contexts, different legal standards permit and promote the return of possessions of a deceased man to his birth family, including those that may have been shared with his wife. These laws often have no regard for the widow's health, wellbeing, or ability to support herself, let alone her dignity. At times, the possessions that are returned include his wife, further violating the very basic principles of dignity and freedom.

> *In some societies, older women are treated like children and brought back under the control of male leaders in the family or the community.*
>
> *Rashida Manjoo, UN Special Rapporteur on violence against women, its causes and consequences*

***Box 3: Lack of normative standards case study: Carson and Others v United Kingdom (Application no. 42184/05) (2008), The European Court of Human Rights***

*Benny Spanier, University of Haifa, Israel*

The European Court of Human Rights is unique and influential, largely because individuals can appeal to the court against states and of the binding nature of its rulings. Spanier focused his quantitative work on a sample of 226 judgements of a total of 1,503 that were handed down to people aged 60 or older between 2000 and 2010. Spanier considers that there is a normative gap related to the rights of older people, within the rulings of the European Court of Human Rights. The European Convention on Human Rights (ECHR) is the only applicable instrument for the European Court of Human Rights. In this instrument, there is no explicit expression of older people's rights. Older people's rights are mentioned in the European Union Charter of Fundamental Rights and in the European Social Charter (revised), but neither instrument is applicable before the European Court. The Carson case illustrates this gap.

In the Carson case (2008), 18 older British citizens who had emigrated away from the United Kingdom after retirement, argued that their pension had been kept at nominal levels and not updated as was customary for all people living in Britain with a British pension. The British citizens argued that they had been deprived of their rights as older people because in this case, they had needed to move for reasons specific to being older (to be closer to familial support networks).

The lawsuit was rejected in all courts of Britain. They appealed to the European Court of Human Rights, but needed to make an argument along lines of discrimination based on residency instead of older age since there are no related provisions in the ECHR.

In the first instance, the Court referred to the rights of older people stating that "the individual does not require the same high level of protection against differences of treatment based on [place of residence] as is needed in relation to differences based on an inherent characteristic such as gender or racial or ethnic origin…".

Spanier noted that since age as a discriminatory characteristic is not recognised within the ECHR, the court does not recognise ageism in the same way it treats sexism or racism. Therefore, the rights of older people were being infringed by European states without recourse to justice.

In conclusion, Spanier felt that an international instrument would have three important and immediate impacts. First, the rights of older people would be defined, evident, and binding. Second, the European Court of Human Rights would have a normative instrument to refer to and be guided by; and third, a new instrument would encourage older people and organisations to assert their rights before the court.

## Implementation

Older people face multiple challenges to reporting violations because of the very specific position that they often find themselves in. This reinforces a cycle of invisibility, non-implementation of weak standards, and lack of accountability.

Rashida Manjoo underlined the importance of approaching rights violations through a dual lens that incorporates both law and practice. She argued that specificity is required before a concept can be mainstreamed, and without specificity, attempted mainstreaming could render issues only more invisible.

European states argue that their current standards are sufficient to protect the rights of older people. However, discrimination was deemed to be widespread and unpunished within the region, not least within age discriminatory job advertisements, which are prevalent.

## Information

Older people who reside in care homes incur formidable challenges to accessing information related to services and protection, or to seek redress or reparation. Often this is because they depend on the very people who may be violating their

rights. In addition, an age-blind approach to dissemination of information means that older people are often not privy to information that could help them make informed decisions.

## Monitoring

A lack of an international protective regime means that contradictions in standards are not adjudicated by a neutral body. This is especially problematic when parallel legal systems exist within one country, such as the concurrence of customary, statutory, and Islamic law in Tanzania. As noted by Edimund Revelian of KwaWazee, Tanzania, customary law impacted on a woman's right to inherit land or a house, and thus, was felt to "push them outside of the protective system" despite other applicable standards.

It was felt that the lack of an international monitoring and protection regime, similar to those for children, women, or people with disabilities was to deny the reality of violations that take place, and especially violations that are the result of specific targeting on the basis of age and perceived helplessness.

***Box 4: Summary of the need for new international human rights instruments***

- Violations are universal in terms of their global and societal reach and of the impact on the older person. This universality translates into a need for a dedicated international rights mechanism. The invisibility of such a large section of the population is representative of tolerance of abuse which, without concrete standards, will remain unaddressed.
- It is evident that regional standards alone are insufficient. Not only is age not codified universally in a binding manner, but there are no regional texts devoted to or containing older people-specific provisions in Western Asia and Asia-Pacific. This means that 59 per cent of all the older people in the world today would not be protected.[16]
- The lack of normative standards on certain issues and the opacity of others would benefit from clear, reasonable, and rights-based international standards.
- A comprehensive framework would inform regional standards and act as a platform for increased dialogue and engagement on ageing issues through a rights lens.
- An international instrument would ensure greater attention to monitoring, data collection and disaggregation, reporting, and prevention of abuses before they happen.
- International standards would mark a shift away from older people being seen solely through a charitable, social development perspective and into one where they are equally valued members of societies with equal rights and responsibilities.
- An international instrument would facilitate the mobilisation of older people themselves to better protect themselves and ensure more equal intergenerational relationships.

# 3. A closer look: Thematic issues

A diversity of case studies were presented along thematic lines in each of the parallel workshops. Below are the key thematic conclusions drawn from these case studies and the considerations for future action discussed in the workshops.

## Workshop 1: Freedom from violence and abuse

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|---|---|
| Moderator: | **Robin Webster**, Age Action Ireland |
| Contributors: | **Livingstone Byekwaso**, SAWAKA, Tanzania<br>**Nena Georgantzi**, AGE Platform Europe<br>**Eppu Mikkonen-Jeanneret**, HelpAge International<br>**Milutin Vracevic,** Serbian Red Cross |

> *After all, the modern human rights movement was founded to foster societies that could guarantee freedom from fear and want. And the principal of universality means that in this endeavour, no one must be left behind. And yet, today, older persons are all-too-often subjected to discrimination deprivation, exclusion and abuse.*
>
> *Navi Pillay, UN High Commissioner for Human Rights, in her video address to the conference, 6 December 2012*

### Conclusion 1: Violence is routine, widespread, and varied. It can be very severe but is often invisible.

- **Violence is routine and widespread**, affecting both older men and women. It takes place at the hands of both family members and strangers, in hospitals, in the home, and in protective state and private-run institutions. As Nena Georgantzi of AGE Platform Europe pointed out, only 1 in 5 older people in Slovakia said they felt safe in their own home.[17]
- **Violence and abuse is varied and can be severe**, including physical, sexual, psychological, and financial abuse – and ranging from the withholding of affection, to rape and sexual coercion, murder, and extortion.
- **Violence is an urgent issue**. Livingstone Byekwaso of SAWAKA, Tanzania gave as an example that an estimated 500 older women are murdered each year in Tanzania, largely related to witchcraft accusations based on their older age.
- **Violence against older people is an invisible phenomenon.** Societal "respect" systems conceal elder abuse or make it difficult to believe or speak about it openly. Judicial systems and police do not always treat elder abuse in the same way they treat abuse towards other groups of people. Shame on the part of the victim decreases the likelihood of reporting elder abuse. Violence against women may become normalised over the entire lifetime. As a result, violence at an older age, when a woman can be more vulnerable, is likely to go unreported. This maintains a culture of impunity in which the

perpetrator is rarely held accountable. Lack of adequate and disaggregated data is at the heart of invisibility from an institutional perspective.

## Conclusion 2: Older people face challenges in accessing and benefiting from services that could or should provide protection.

- **Information** on existing services is not always shared adequately or appropriately in an accessible format for older people.
- In some cases, older people **lack the necessary paperwork** to sign up for services.
- Some older people may be reluctant to use formal services for **fear of not being understood** or not understanding their complexities.
- **Legal systems are fragmented** and so it is not always clear where to take a complaint for a particular violation.
- When a formal approach to access available services is made, the **experience can be very discouraging**. **Stigma prevails within judicial systems** and cases are often dismissed by local authorities as a matter that should be resolved within the family.
- **The length of court procedures are disincentives for older people to engage with them.**

## Conclusion 3: Legislation is confusing, lacking, or fragmented, rendering implementation very difficult.

- Without **legal clarity** on an international level, older people are vulnerable to being subjected to the lowest legal standards, especially if living in a country with parallel legal systems. Livingstone Byekwaso noted that in Tanzania, there can be legal contradictions in the application of statutory, Islamic and customary law, especially in terms of inheritance law. Customary laws often prevail, which result in older men and women being forcibly driven from land and property following the death of their spouse.
- **Interpretations of elder abuse** vary across the country, even within the European sphere. As a result, there is confusion as to whether unintentional as well as deliberate mistreatment can be included in legal cases. Financial abuse is not always included in definitions of abuse, even though it is one of the most widespread violations in the European context.
- **Liability for elder abuse is unclear**. Often, domestic abuse laws are used in Europe to address violence against older people, but does not cover violence in institutional care. Nena Georgantzi noted that according to United Kingdom case law, "care provided by the private and voluntary sector is not covered by the Human Rights Act and so there is a legal gap which can result in significant disparities among care recipients".[18] In the Netherlands, however, as noted in their report on the domestic implementation of the MIPAA,[19] health legislation does address abuse in hospital and medical settings, but does not provide sufficient safeguards in residential care. The impact of this is being denied the right to a daily shower or to spend time each day in the open air.

***Box 5: Considerations for future action: Freedom from violence and abuse***

- Age-friendly environments can mitigate the risk of abuse.
- Access to justice for older people should be facilitated and be of high quality, and age-appropriate legal advice should be easily available.
- Monitoring of all care services for older people, including in private and public institutions, in the home, and by family members, must be ensured to prevent and address abuse.
- An international instrument would increase visibility of the issue, ensure greater accountability, and create an overarching legal framework on issues such as liability, terminology related to elder abuse, obligations, guardianship, and access to justice.
- A binding international instrument would require states to collect better data, disaggregated to reduce invisibility of violations of older people's rights.
- A binding instrument could be drafted to ensure that special measures, by way of positive actions to promote the rights of older people, are taken by states, not just to protect or prosecute after a violation has taken place.

## Workshop 2: Autonomy and independence

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| Moderator: | **Louise Richardson**, AGE Platform Europe |
| Contributors: | **Nony Ardill**, UK Equality and Human Rights Commission<br>**Eduardo Cáceres Valdivia**, APRODEH, Perú<br>**Halina Potocka**, AGE Platform Europe |

### Conclusion 1: Loss of and denial of autonomy and independence is central to the denial of a range of rights in older age and should be a core component of any new legal instrument on older people's rights.

- **Older people are frequently denied autonomy to make decisions** affecting their support and care, especially in relation to withdrawal from residential support services to informal care, forced institutionalisation, and determining their daily routine. This is especially the case for older people who face challenges to accessing information, are poor, and live in rural areas.
- **Older people in care are at higher risk** of being under-treated for pain and over-prescribed other drugs, as well as not receiving interventional care at all – for example, in some countries there are upper-age limits for breast cancer screening.
- **Home care services can support older people's autonomy and independence if they are done in the right way.** If not, they can result in damaging human rights abuses. The UK Equality and Human Rights Commission inquiry into home care found the majority of incidences of abuse and neglect were systemic due to the high number and fixed nature of tasks the carer had to perform, and visit limitations of 15 minutes. These pressures resulted in a lack of respect for privacy, disrespectful ways of handling

intimate personal care, lack of respect for autonomy, and choice in how and what services were given.

- **Lifelong learning increases the ability of older people to maintain autonomy and independence, and should be supported.**

### Conclusion 2: Power imbalances in relationships, often caused by ageism and discrimination on the basis of older age, are often the cause of denial of autonomy and independence.

- **Older people are usually on the weaker side of power imbalances** that occur in family relationships, in home care and residential settings, inside civil society movements, and in access to public arenas.
- **Power imbalances are also related to finance,** and the current economic climate has forced additional burdens on to older people who care for kin, but who have themselves received government budget cuts to their provisions. The concept of autonomy should be informed by the need for financial independence.
- **Multiple discrimination** related to gender, residence, ethnicity, linguistic, or other minority status exacerbates the power imbalances suffered by older people.
- **Realising older people's rights can have a positive impact on power imbalances.** For example, the power imbalance has been somewhat eroded by the Renta Dignidad (non-contributory pension scheme) in Bolivia, increasing their autonomy and independence, and subsequently, their exercise of their civil and political rights.

### Conclusion 3: Person-centred standards to ensure quality and regulate delivery of support and other care services are critical to ensuring older people's autonomy and independence, and must be accompanied by changes in negative societal attitudes towards older people.

- **Ageism often dictates how services are delivered,** and the way services are delivered often amount to rights abuses.
- **A person's value should not be defined in terms of productivity.**
- **Taboo subjects,** such as suffering, death, loneliness, and relationships, should be more openly discussed.
- **Age-friendly and enabling environments** based on universal design positively impact on older people's autonomy and independence as they allow for greater access and participation on a number of levels and could reduce the burden of the caregiver.

***Box 6: Considerations for future action: Autonomy and independence***

- National and international anti-ageism campaigns, such as the Scottish Government's 2008 campaign, See the Person, not the Age, could be rolled out to address prejudice and challenge mindsets. This should include emphasis in tackling discrimination on the basis of older age in the media as well as in the advertising industry.
- The UK Equality and Human Rights Commission analysis concluded that local authority knowledge of human rights obligations was lacking and financial pressures emphasised cost over quality care. It recommended the strengthening of legal protection of older people's rights. Since private and voluntary care providers of home care services fall outside the remit of the UK Human Rights Act, which is not a challenge exclusive to the UK, an overarching international binding agreement would provide the most comprehensive framework to be developed into national law.
- A new international legal instrument would establish norms that redress the current power imbalances caused by ageism and discrimination on the basis of older age and, thereby, improve protection of older people's autonomy and independence.
- A new international legal instrument would also raise international visibility of ageism and discrimination.

## Workshop 3: Discrimination in later life

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| Moderator: | **Manuel Montero Rey**, IMSERSO |
| Contributors: | **Thembekile Hlubi**, Muthande Society for the Aged (MUSA), South Africa<br>**Matthias Kloth**, Council of Europe<br>**Dr Mateja Novak**, Federation of Pensioners' Associations of Slovenia |

### Conclusion 1: Discrimination on the basis of older age is geographically universal, and exists within the familial sphere as well as within the ambit of state responsibility.

- **Family members are often responsible** for physical and financial abuse in all global regions. The psychological impact of being excluded in later life from family and personal decision-making can be very damaging.

> *It is confusing because it is my son. We don't want to report it because it is my family. You keep quiet because you know of the love you have for this person and you don't want them to go to jail.*
>
> *Thembekile Hlubi, Muthande Society for the Aged, South Africa*

- State officials who are responsible for the care of older people rarely receive adequate training and are ill-equipped to prevent, observe, monitor, and report instances of abuse. Information is rarely made available in an adequate or accessible format to older people.
- Discrimination on the basis of older age is often built into legislation, for example, with mandatory retirement ages. The highest human rights body in

Europe, the European Court of Human Rights, maintains a mandatory retirement age for its judges.

- Pensions facilitate older people's independence on a local scale, but that independence is dependent on the government's capacity and will. Decreases in pensions have been experienced across Europe. Dr Mateja Novak of the Council of Europe highlights that 60 per cent of pensions in Slovenia are not sufficient for supporting a household. In East Germany, divorced women lost their pension rights under the unification act as it did not regulate to transfer women's pensions to the unified system on an equal basis.

- **The political systems themselves are difficult to access** making it difficult for older people to reach out to influence policy.

### Conclusion 2: Age discrimination is a definite gap in existing human rights legislation, and an international convention could help to fill it.

- The essence of violations that are related to older age has to be manipulated and, therefore, diluted to fit the remit of legal tools intended to provide **holistic protection.** The European Court of Human Rights has given many judgments relevant to older people, but since Article 14 of the European Convention on Human Rights does not explicitly mention age, states are not compelled to recognise age discrimination and cases cannot be argued on age discrimination alone.

- The lack of explicit standards means states are not obliged to initiate **special measures** to promote the rights of older people**.**

- **Soft law**, such as that developed by the Council of Europe, provides good guidance and ammunition for advocates. However, its non-binding nature renders advocacy initiatives even more challenging for older people. Advocacy is already hampered by various factors, including limited access of older people to information, political power, and decision-makers.

### Conclusion 3: Discrimination has multiple levels. Older people often suffer multiple forms of discrimination, with older women particularly impacted.

- **Multiple discrimination, for example, related to gender, marital status, or national origin, renders older people especially vulnerable.** As noted by Marian Boecker from the Association of women divorced in the former German Democratic Republic, older divorced women in the former German Democratic Republic with West Germany had pension entitlements stripped off at point of unification, leaving 1 in 2 women living below the poverty line affected. An estimated 500,000 affected women have already died without the opportunity to gain redress.

- **Age discrimination by association** is under-developed in law. There are few standards for, for example, family carers of older people.

### Conclusion 4: It is insufficient to develop legal standards without efforts to change social norms and values.

- **Changing value systems linked to increasing individualistic societies** that involve less intergenerational contact was seen to have generated social norms that discriminate against older people.

- **These social values were perceived to exist within all levels of societies**, and by a range of people, including scientists, government officials, doctors, politicians, bankers, family members, youth, and older people themselves.
- **The media is seen to reinforce negative stereotypes** of older people, where older people are portrayed at all.

> *The media is being used to pit one generation against another. Younger generations fear older persons – older people fear younger. We need to make new connections.*
>
> *Dr Mateja Novak, Federation of Pensioners' Associations of Slovenia*

***Box 7: Considerations for future action: Discrimination in later life***

- Alliances could be made across different organisations and bodies to ensure greater understanding of age-related issues across the social sphere.
- Drawing from the experience of the South Africa Older Persons Forum, older people's voices should be drawn into policy discussions, heeding the slogan "Nothing about us, without us".
- Data should be thoroughly disaggregated to ensure the most vulnerable groups and those suffering multiple discrimination (eg older women in conflict) are rendered more visible, and have their needs addressed more easily. This would also shed light on other issues, such as how life expectancies can be an indicator of levels of discrimination. For example, Roma people in Europe and other minority groups around the world have shorter life expectancies.
- Legislation or guidance that includes age discrimination provisions should ensure that where they relate only to younger or older people, the difference is explicit. Where they relate to both, sufficient explanatory information should be included to explain the obligations for both age groups.
- A regional or global campaign could help change societal attitudes and values relating to older age, including within the media, advertising, and programming.
- A binding international instrument could help fill the normative gap on age discrimination.
- A binding instrument should ensure age-appropriate provisions and funds for enabling access to justice, and any judicial procedure should be encouraged to be resolved as quickly as possible while an applicant is still living, which would also contribute to building up case law.

## Workshop 4: The right to health

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| Moderator: | **Rebecca Taylor**, MEP, UK |
| Contributors: | **Christian Courtis**, Office of the High Commissioner for Human Rights<br>**Ingrid Cupido**, Age-in-Action, South Africa<br>**Tom Gentry**, Age UK<br>**Virginia McVae**, Northern Ireland Human Rights Commission |

### Conclusion 1: Access to health-related services is often challenging for older people.

- **Physical access to health centres or other facilities can be challenging**, in terms of distance, time required to queue, number of repeat visits required, and costs.
- **Older people sometimes face direct discrimination**, such as being placed low on a priority list or being denied treatment because of their age. This can be exacerbated by multiple discrimination, for example, along ethnic, sexual orientation, gender, immigration status, class, or tribal lines. Assumptions about risk are sometimes made based on age rather than clinical assessment. Inappropriate decisions are sometimes made based on life expectancy at birth. This occurs even in countries with equality legislation, such as in the United Kingdom, where the Equality Act was passed in 2010. Older people often face barriers to accessing supplementary health insurance because of age-related discriminatory provisions, as opposed to clinical criteria.
- **Failings can be caused by insufficient resources or because resources are not adapted to different needs.** It was understood that provision of services in the global south would need to be progressively realised for financial reasons.

> *Older people are more likely to have cancer, but do not access services. Treatment rates drop off sharply and consistently as patients move into higher age groups - yet this is not seen as an issue. Even though older people represent the biggest users, the system is not organised around their needs.*
>
> *Tom Gentry, Age UK*

### Conclusion 2: Direct discrimination is not the only barrier to the right to health of older people.

- **Rationing of services** is often made on the basis of age. Currently, the allocation of health spending and subsequent services is at the discretion of states and there is no guidance, binding or non-binding, that is based on a rights framework.
- **Age-friendly services** are lacking. Staff need – but do not always receive – appropriate training, including in communication skills and working effectively with older people.

- **Long-term care** provisions on an international level are lacking. The importance of home based care needs to be grounded in legislation.
- Guidance on care related to dealing with **chronic illness, non-communicable diseases, and palliative care** are largely absent from existing instruments. Each disproportionately impact older people.
- **Informed consent** is an important element within the Convention on the Rights of Persons with Disabilities. Any future convention on the rights of older people would merit full consideration of the role of informed consent, autonomy, and independence.
- **Legal guardianship** is not adequately addressed in legislation, leaving older people vulnerable to having their decision-making powers forcibly or coercively removed.

### Conclusion 3: Better efforts to safeguard and protect health throughout the life course should be encouraged.

- **Preventative services and supporting health throughout the entire life course** would improve health in later life and prevent overburdening of services. Healthcare should shift away from treatment to prevention.
- **Palliative care for older people, dementia and other mental health issues, end of life care, and dignified dying** are areas that receive little attention from the public, private, and government spheres.

***Box 8: Considerations for future action: The right to health***

- Home-based care must be made more widely available but be fully monitored and supported.
- Specialist geriatric teams should be supported, consulted, and employed more consistently.
- Data should be audited better to analyse and address drop-off rates in treatment for older people. Quality databases and analysis are needed to inform decisions relating to access to healthcare.
- NGOs should ensure engagement and collaboration with National Human Rights Institutions so that they too are equipped to work on ageing issues.
- NGOs should be empowered to undertake skilful advocacy and build knowledge of rights amongst service users to assist with early resolution of their cases.
- NGOs should make use of existing hard and soft law, using all mechanisms available to ensure greater visibility and accountability, but also to show where gaps lie in the current system.
- International legislation should ensure gaps in normative frameworks related to health, such as long-term care, rationing of services, consent, and guardianship, are appropriately addressed.

# 4. Building political support for human rights instruments on older people's rights in Europe: Next steps

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| Moderator: | **Ken Bluestone**, Age International, UK |
| Panellists: | **Robin Allen QC**, Cloisters Chambers, UK<br>**Claudia Mahler,** German Institute for Human Rights<br>**Aneta Plavinová**, Secretariat of the Government of the Czech Republic's Council for Human Rights<br>**Oldrich Stanek**, Život 90, Czech Republic<br>**Virginia McVae**, Northern Ireland Human Rights Commission<br>**Rebecca Taylor**, Member of the European Parliament, UK |

## Principles for change

Clear principles emerged from discussions about what fundamental issues must be at the heart of any future advocacy initiative about human rights instruments for older people's rights.

### Engagement is required across many platforms

It is clear that any advocacy effort needs to engage multiple sections of society, especially those who will be directly impacted by efforts, such as older people who are not already engaged, families, private and public care providers, and state institutions.

Engagement is also required across the political spectrum, including MPs from different parties who may be part of relevant cross-party groups. Targeting different domestic ministries, such as the Ministries for Social Development or Health, will increase the likelihood that advocacy informs the international approach taken by the Ministries of Foreign Affairs.

Civil society groups, community-based organisations, national and international NGOs, including NGOs that do not normally work on ageing issues, should be engaged. National Human Rights Institutions (NHRIs) overlap civil society and government spheres and should be viewed as influential stakeholders whose buy-in is essential. Their involvement will also ground the work on a national level within a human rights framework. Above all, national mobilisation is required to ensure that ministries are aware that there is a need and a desire for action on an international level.

It remains important to engage those who may try to block advocacy efforts, including national governments at the European level who are not supportive of new international instruments.

### Arguments need to be persuasive and targeted

While arguments reach out to many audiences, they need to be adapted to each particular audience, with specific asks made that are within the capacity and mandate of the targeted group.

In countries or in cross-sections of society with a distorted or poor understanding of the human rights discourse, efforts must be made to make human rights language accessible and relevant.

Information, evidence, and case studies grounded in national experience will assist MPs to make a case on a domestic level. Providing solutions, emphasising the benefits, and outlining steps forward in a concise and individualised manner, and in the national language, will facilitate advocacy efforts.

It is important that stakeholders are aware of the counter arguments on human rights instruments for older people and how best to respond to them. Ministries of Foreign Affairs may say that they are against a convention, for reasons such as finance or overburdening the system. They may argue that mainstreaming is sufficient. It is clear that mainstreaming can only take place once the issues are clearly codified; at the moment there are too many elements lacking legal clarity for it to be sufficient. It is not good enough to argue that because of cost constraints, violations against a particular section of society continue unabated.

The urgency of the issue must be emphasised in terms of numbers affected, the demographic outlook for the coming decades, and current financial outlooks and cuts to budgets that directly impact on older people.

## Actions must be timely and make use of all opportunities

It is important that all available opportunities are used to build up visibility and to show where gaps in the current legal framework exist. Where resources are lacking, collaboration between organisations and through networks will ensure the most effective and efficient use of time and resources.

Local mobilisation of older people at timely moments, such as ahead of elections, can be an effective tactic to generate greater interest and commitments from a Member of Parliament. A relevant incident or issue featuring in local or national news can also provide timely points at which to make reactive interventions to MPs or through other channels, including the media.

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| | • Consider suggesting to Malaysia, Argentina, South Africa, and other friendly states that they approach the Ministries of Foreign Affairs in European capitals.<br>• Meetings could also be held with fringe countries who could be convinced to be more supportive. Meetings could also take place with less supportive states in an effort to engage and to exchange viewpoints. |

## Medium-term

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| **February to June 2013** | **Preliminary scoping work to engage sceptical states ahead of the fourth session of the OEWG.**<br>Efforts to engage with sceptical European states should start early on, and especially focus on countries that have already made positive comments.<br>• Identify where support already exists within European Governments. Individual ministries (Social Affairs, Foreign Affairs, or Health) may have different positions.<br>• Engage with and coordinate civil society to ensure they are aware of the impact they can have on their national government. Support their engagement with governments. This will demonstrate the political support that exists for new international human rights instruments for older people.<br>• Create opportunities for national government ministries to make public their support for new international human rights instruments for older people.<br>• Build alliances across European Member States to shift the European Union consensus to recognise the need for new international human rights instruments. |
| **Before August 2013** | **Preparatory work ahead of fourth session of the OEWG on 12-15 August 2013 (to be confirmed).**<br>Prior to the session, there are a number of tasks that can be undertaken.<br>• Maintain good relationships with friendly states, ensure that they preserve their position and attend in a positive and constructive manner. Offer to share papers with them in advance to help shape their statements.<br>• Encourage the delegates of supportive and pro-active states in New York to meet regularly in advance of the session, to share information and to build a strong coalition for future action. Ensure that whatever activities are taking place in Geneva are shared with New York and vice versa. |

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| | • Papers are normally allowed to be submitted in advance on the agenda items. The mandate has been extended to discuss what a new international instrument could look like, and so, papers specifically focusing on this will be particularly helpful.<br>• Increase the visibility of older people and civil society at the event through prior registration.<br>• Encourage as many stakeholders as possible to take part, including NGOs who may not normally work on ageing issues.<br>• Encourage NHRIs to make submissions and to attend. Provide NHRIs with argumentation and reasoning to support your arguments. |
| **12-15 August 2013 (to be confirmed)**<br>(New York, USA) | **During and immediately before the fourth session of the OEWG.**<br>• Encourage friendly states to meet together before the opening of the session to ensure cohesion in approach.<br>• Meet with any NGOs or other civil society organisations to share papers and plans of action. Discuss priorities with each NGO and where they overlap; discuss the most efficient and effective way to reach those goals. Avoid duplication unless strategic, and seek to avoid contradicting or undermining each other.<br>• Meet with friendly states to encourage them to make constructive statements. Encourage them to share their concerns so that you can try to provide counter-arguments.<br>• Encourage friendly states to proactively reach out to fringe states who may be persuaded to help dilute an unsupportive regional consensus. Meet with states you have identified as possible friendly states.<br>• Draft and deliver statements in plenary sessions. In the statement in the concluding session, specifically reference negative arguments that have been made, and provide counter-examples and information. |
| **September 2013**<br>(Geneva, Switzerland) | **The report of the OHCHR consultation on the promotion and protection of the human rights of older people will be considered during the third session of the Human Rights Council.**<br>During the relevant agenda item, there will be space for states and NGOs to comment on the report and suggest steps forward. There is space not only to get on to the NGO speakers agenda, but also to reach out to states in advance, to shape the response to the report that they will make in the plenary session. There is a danger that the report be adopted without any states making it a point of discussion, which decreases visibility of the process and potential buy-in from undecided states. |

## Longer-term

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| **2014** | **European Parliamentary Elections**<br>Prior to the elections there are a number of activities that can be undertaken to ensure greater visibility of ageing issues on a European level.<br>• Prior to elections, meet with MEPs to ask them to ensure ageing is included on their manifestos. Seek commitments for future action if elected. Remind MEPs that older people are more likely to vote than other age groups.<br>• Seek commitments from strong MEPs that they will support the continuation of the Intergroup on Ageing and Intergenerational Solidarity and that they will seek to be part of the group.<br>• Where MEPs make supportive statements, raise awareness of this support in your local constituencies. |
| **To be confirmed** | **Future OEWG and Human Rights Council processes**<br>It is not known what developments will come out of the processes already taking place, however, ensuring the engagement across positive states will ensure the continuation of the process. |

# Taking action

| **Who are you?** | **Suggested task** |
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| **On a local level** | |
| **Individuals and Community-based Organisations** | • Let your local media know of the international interest in a new legal instrument and demonstrate how that would impact on the situation in your local community. This could include better services, support for careworkers, and better monitoring of services.<br>• Reach out beyond groups specific to older people. Could youth groups, university groups, and other civil society organisations be interested in assisting you with advocacy work?<br>• Contact your MP and ask him to raise a question during parliamentary discussions about the country's position on new international legislation to protect and promote the rights of older people, ensuring you show how important those new standards could be in his constituency. |

| On a national level | |
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| **National NGOs** | • National radio can provide excellent opportunities to reach out to large audiences. Prior to the fourth session of the OEWG or the Human Rights Council consultation, approach national media with information on how these international discussions could impact on a national level.<br>• National NGOs should read the thematic reports of the UN Special Rapporteurs that are relevant to older people. If your government does not do as the Rapporteurs have recommended, it may be worth meeting with government officials to point this out as part of a wider initiative to push for international standards.<br>• Consider targeting the corporate sector in an effort to improve the presentation of older people in advertising.<br>• Consider running a training session for journalists on how to discuss ageing issues and older people in their media.<br>• Consider reaching out to migrant groups, minority groups, and women's groups, among others, and ask about levels of protection for their older people. Use this information in submissions to UN processes.<br>• Create formal or informal networks between other NGOs working on these issues to share information and resources, ensure coordination in advocacy initiatives, conduct surveys, and capture case studies that can be used for submissions to the UN, to the national government, to a NHRI, or other body.<br>• Reach out to NHRIs and engage them as a key actor within the national and international lobbying framework. Offer to run trainings or information sessions on ageing and the rights of older people if they are not yet working on these issues. Emphasise the timelines and urgency of current opportunities to influence national as well as international processes on concretising the rights of older people.<br>• Work with representatives of European Union institutions (European Parliament, European Commission, and European External Action Service) to build greater understanding of the human rights situation of older people globally.<br>• In the longer-term, work actively on tackling negative social attitudes to people in later life and make ageism and discrimination in older age unacceptable to society. |

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| **Members of Parliament** | • Become better informed about the situation of older people in your community. Are local residence institutions monitored? Is access to health and other services adequate? To what degree do intergenerational activities take place? Do older people have access to political decision-makers such as yourself? Ensure that in seeking answers to these questions, you consider ageing from a human rights framework, as well as, perhaps, one related to care and services.<br>• Consider rotating drop-in meetings for constituents to ensure all members of the community have an opportunity to talk with you. In upcoming meetings, ask them and other constituents, especially those who may know or care for older people, what they think would positively impact on their lives. Use this information to inform your position when discussing ageing within parliamentary issues.<br>• Consider raising a question in parliamentary hearings about your country's position in relation to the OEWG's remit to consider new international legislation on the rights of older people. Ask how the national position has been adopted and whether a formal consultation process will be considered which includes input from all constituencies.<br>• Read your country's report on their implementation of MIPAA and consider areas that do not seem to tally with the information you have received from your community. Where the information seems contradictory, consider requesting a parliamentary forum to discuss the content. Make a congratulatory statement or approach where they have taken positive steps to promote and protect older people's rights.<br>• Consider whether you would be interested in participating in, or initiating a cross-parliamentary group on ageing and human rights in your parliament. |
| **National Human Rights Institutions** | • Ensure good cooperation within NGO networks (where appropriate) and benefit and contribute to sharing of information, documentation, and mobilisation ahead of UN opportunities related to ageing.<br>• Consider national campaigns which frame older people and ageing within a human rights framework using easily accessible language.<br>• Reach out to organisations working on ageing and with older people, if you are not currently engaged in this field. It is possible they too are unaware of discussions taking place at an international level. |

*Are people in Europe aware of ageism? Yes. Are they sufficiently aware, then no.*

*Louise Richardson, AGE Platform Europe*

| On an international level | |
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| **NGOs without an ageing focus** | • Consider whether ageing is a hidden issue in your work. Have you worked on issues where older people have been affected while not considering it within a specific ageing framework?<br>• If you have covered cases of abuse against older people in the past, consider submitting this ahead of the OHCHR consultation in early 2013 and attending in person. Reach out to organisations working in the field of older people's rights for information on how to contribute to wider advocacy initiatives. |
| **International NGOs** | • Consider creating a working group related to engagement on the OEWG and Human Rights Council processes on a European level. Share lobbying plans and tactics, information, and case studies.<br>• Consider creating or strengthening national working groups or networks related to engagement on the OEWG and Human Rights Council processes.<br>• Consider engaging lawyers, academics, or academic institutions to discuss the specifics of convention content, components, and drafting.<br>• Be prepared to analyse the national reviews of the MIPAA that will be presented in February 2013 at the Commission for Social Development. Be aware of the intricacies of the report, and not just the overall picture. For example, the Dutch report notes that legislation on older people should be strengthened.[20] However, we know the Netherlands is against any new international legislation. |
| **Regional networks** | • Consider drafting a joint statement that draws from discussions and the process so far that can be taken back to different constituencies on a national level to show the international nature of the movement and buy-in.<br>• Following an analysis of feasibility, consider leading on an international petition, such as one that could be sponsored by Avaaz.com, to call for greater support for international human rights instruments on the rights of older people.<br>• Consider approaching one or more members of the European Parliament to ask for their support in arranging a thematic meeting or briefing of one of the parliamentary committees or subcommittees. Three months are required for arranging meetings and for gathering cross-party and cross-group support from different states. Breakfast briefings are easiest to attend, as well as lunch meetings or receptions. Engage older people and NHRIs from different countries for a more holistic |

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| | event. This can form the basis for seeking a written declaration, which is a short 200 word text of key points, from the parliament. It needs to be signed by at least half the MEPs (376); normally, you have three months to get those signatures.<br><br>• Committees of the European Parliament can also issue thematic reports. Consider approaching the civil liberties committee to suggest that 2013 is an important year to do a report on the issue of older people and ageing, mindful of the developments on a UN level, but also in response to 2012 as the European Year of Active Ageing and Intergenerational Solidarity.<br><br>• Consider whether an Age Demands Action campaign in Europe, with a specific focus on the international systems, could be effective. |
| **Members of the European Parliament** | • Become better informed about the situation of older people in your community. Ensure that in seeking information, you consider ageing within a human rights framework.<br><br>• Reach out to older people when working in your constituency to ensure they are aware of the work you do, and the opportunities that exist to inform your decisions.<br><br>• Consider arranging a thematic meeting or briefing of one of the committees or subcommittees, especially, but not only, the Subcommittee on Human Rights. Talk with colleagues from your own and other parties and regional groups to see what level of support there is for grounding ageing within a human rights framework, and not solely a development one.<br><br>• Meet with interested civil society, and ensure they are aware of parliamentary processes and timelines. Ask them to consider collaborating on a written declaration that could be pushed further down the line, and suggest they consider an action plan for reaching out to as many MEPs as possible.<br><br>• Consider approaching colleagues within the civil liberties committee to push for a 2013 report on older people and ageing, mindful of the developments on a UN level, but also in response to 2012 as the European Year of Active Ageing and Intergenerational Solidarity.<br><br>• Consider how happy you were with the consultation process prior to the adoption of an EU position against new instruments on the rights of older people, and discuss with colleagues. If you would have preferred greater consultation, perhaps include a discussion on such processes in one of the briefings or thematic sessions.<br><br>• Support and encourage colleagues to support the continuation of the Intergroup on Ageing and Intergenerational Solidarity. Consider whether you would be interested in participating in that group. |

# 5. Conclusion

> *I believe that we are reaching a tipping point in the global struggle for the human rights of older persons, and in a few years, many will say that at Osnabrück, the balance tipped towards justice.*
>
> *Craig Mokhiber, Chief of the Development and Economic and Social Issues Branch, Office of the High Commissioner for Human Rights*

Over the course of three days, participants at the conference, Strengthening the Rights of Older People Worldwide: Building Greater European Support, emphasised that the situation of older people around the world requires urgent attention on local, national, regional, and international levels.

Violations of older people's rights are universal in terms of their geographic and socio-economic reach, of where they take place in the societal sphere and who is responsible for them, and of the impact on the victim.

Loss of autonomy, often caused by power imbalances, is seen to be central to the denial of a range of rights. Older people are particularly vulnerable if they suffer discrimination along multiple lines that could include gender, ethnicity, or disability, as well as older age. Violence and abuse suffered by older people can be physical, sexual, psychological, and financial, and is often severe and routine. Older people face great challenges in accessing information and services, especially in the fields of health, finance, and justice. Health services should be comprehensive, focus on the entire life course, and be non-discriminatory, especially in terms of medication, consent, and access.

The current framework for protection and promotion of the rights of older people was seen to have normative gaps, implementation gaps, information gaps, and monitoring gaps, each of which have facilitated and permitted the above violations. It was felt that the lack of normative standards on certain issues and the opacity of others would benefit from clear, reasonable, and rights-based international standards.

Participants at the conference believed a new international binding instrument would inform regional standards and act as a platform for increased dialogue and engagement on ageing issues. An international instrument should be comprehensive and ensure greater attention to regular monitoring, data collection and disaggregation, reporting, and prevention of abuses before they happen. Provisions to combat stigma, stereotypes, social prejudice, and discriminatory societal values that currently tolerate ageism and discrimination, including within the media and advertising industry, should be included. Any new international instruments should ensure that access to information, justice, and health should be age-appropriate and easily accessible. A new instrument should also be informed by detailed rights-based discussions on issues that include liability, consent, autonomy and independence, long-term care, rationing of services, terminology, obligations, guardianship, and access to justice.

New standards would ground ageing within a human rights framework and strengthen the shift away from older people being seen solely through a charitable, social development perspective and into one where they are equally valued members of societies with equal rights and responsibilities.

Future action requires engagement across many platforms and with many stakeholders. Arguments must be persuasive and targeted, and actions should be timely and emphasise the urgency of the issue.

Both the consultation led by the OHCHR and the fourth session of the OEWG provide critical opportunities for a range of actors to build on the momentum of

2012, to reach out to key undecided decision-makers, and to ensure that the rights of today and tomorrow's older people are comprehensively and unambiguously defined, protected, and promoted.

## Notes

[1] Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat. World Population Prospects: The 2010 Revision, http://esa.un.org/unpd/wpp/index.htm

[2] For a comprehensive overview of binding and non-binding legislation on an international and regional level related to the rights of older people, see; Helpage International, *International human rights law and older people: Gaps, fragments and loopholes,* 2012, www.helpage.org/silo/files/international-human-rights-law-and-older-people-gaps-fragments-and-loopholes.pdf

[3] Resolution adopted by the General Assembly, *Question of Ageing*, A/RES/37/51, 1982

[4] Resolution adopted by the General Assembly, *UN Principles on Older Persons* , A/RES/46/91, 1991

[5] Resolution adopted by the General Assembly, *UN Principles on Older Persons* , A/RES/57/167, 2002

[6] UN Secretary-General Report, *Follow-up to the Second World Assembly on Ageing,* A/64/127, July 2009

[7] The nine core international human rights treaties are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Convention on the Rights of Persons with Disabilities (CRPD).

[8] Sepúlveda M, *Report of the independent expert on the question of human rights and extreme poverty,* A/HRC/14/31, 2010

[9] Grover A, *Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/18/37, 2011

[10] The Working Group on Older Persons and People with Disabilities in Africa, of the African Commission on Human and People's Rights has drafted a protocol to the African Charter that is currently under discussion. The Organization of American States has prepared a draft convention on the human rights of older persons. Formal negotiations on the text started in September 2012. The Steering Committee for Human Rights (CDDH) of the Council of Europe has created a new drafting group, CDDH-AGE, to elaborate a non-binding instrument on the "promotion of the human rights of older persons".

[11] UN Resolution adopted by the General Assemlderbly, *Follow-up to the Second World Assembly on Ageing,* A/RES/65/182, 2011

[12] The Third Committee resolution A/C.3/67/l.9/Rev.1 was originally put forward by El Salvador and then co-sponsored by 26 Member States from across Latin America, Africa and Asia. Three states voted against the resolution (US, Canada, Somalia), 109 abstained and 54 voted in favour. The voting record can be accessed here: www.un.org/en/ga/third/67/docs/voting_sheets/l.9.Rev.1.pdf. In the subsequent General Assembly vote on 20 December 2012, 54 Member States voted in favour, five voted against and 118 abstained. Voting records can be accessed at www.un.org/en/ga/67/resolutions.shtml

[13] Resolution adopted by the Human Rights Council, *The Rights of Older Persons,* A/HRC/RES/21/23, October 2012

[14] Report of the United Nations High Commissioner for Human Rights (E/2012/51), April 2012, pursuant to General Assembly resolution 48/141

[15] The European Reference Framework online for the Prevention of Elder Abuse and Neglect, www.preventelderabuse.eu/elder-abuse/about-elder-abuse/10-rise-in-cases-of-alleged-elder-abuse

[16] Report of the United Nations High Commissioner for Human Rights (E/2012/51), April 2012, pursuant to General Assembly resolution 48/141

[17] Survey conducted in 2012 by Fórum pre pomoc starším, PhDr. Peter Guráň and Mgr.Milan Fico

[18] YL v Birmingham City Council and Other [2007] UKHL 27

[19] Report on the Regional Implementation Strategy (RIS) of the Madrid International Plan of Action on Ageing (MIPAA) in The Netherlands, *Second Review and Appraisal*, November 2011, www.unece.org/fileadmin/DAM/pau/age/country_rpts/NLD_report.pdf

[20] Report on the Regional Implementation Strategy (RIS) of the Madrid International Plan of Action on Ageing (MIPAA) in The Netherlands, *Second Review and Appraisal*, November 2011, www.unece.org/fileadmin/DAM/pau/age/country_rpts/NLD_report.pdf