

## **Normative content for the rights to equality and non-discrimination and to freedom from violence, abuse and neglect**

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The normative content of the rights to equality and non-discrimination and to freedom from violence, abuse and neglect are the subject of the consultation in advance of the 9<sup>th</sup> Open-ended Working Group on Ageing (OEWG) and will be discussed at the 9<sup>th</sup> OEWG session in July 2018.

These recommendations are taken from *Entitled to the same rights: What older women say about their rights to non-discrimination and equality, and to freedom from violence, abuse and neglect*, HelpAge International, 2017.

### **1. Normative content for the right to equality and non-discrimination**

Older people have the right to equality and freedom from discrimination on the basis of their age or any other ground, alone or in combination with another ground or grounds.

#### **Equality**

- Equality in older age is the full participation and inclusion of older people in all aspects of society based on the equal respect for the dignity of older people.
- The right should contain a range of general obligations on States to ensure both formal and substantive equality in older age, including a duty to consider the differential impact of all their decisions, in particular age-based policies, on older people.
- Special measures, namely proactive measures that favour older people in order to ensure equality and non-discrimination in practice and a genuine benefit to address disadvantage, should be allowed.

#### **All forms of discrimination**

- The prohibition of and guarantee of legal protection against discrimination in older age should apply to every aspect of life.
- All forms of discrimination should be prohibited, including direct, indirect, by association, by perception or imputation, and harassment.
- The prohibition of discrimination in older age should not be subject to a wider range of exceptions to the principle of equal treatment than is permitted for any other prohibited ground. Any exceptions, including age proxies, require specific justification.

#### **Multiple discrimination**

- Intersectional discrimination, namely the combined effect of age and another personal characteristic or the combined effect of any two or more characteristics, should be prohibited.
- Cumulative discrimination, namely discrimination on a number of occasions over time, should be prohibited.
- The intersectional and cumulative discrimination experienced by older women should be highlighted.

### **Ageism and structural discrimination**

- Both discrimination against an individual and harmful ageist social norms and practices should be prohibited.
- States should have an obligation to take steps to eliminate harmful ageist social norms and practices, including but not limited to raising awareness of the rights and capacities of older people; countering any discriminatory ageist perceptions and practices towards older age and older people; and, eliminating any harmful traditional practices and institutional, systemic or structural practices which adversely affect the human dignity or personal security of older people.

### **Remedies, sanctions and enforcement**

- States should assist older people in making claims and accessing justice by providing information on remedies and how to access them; legal assistance and legal aid; a hearing within reasonable time with special measures in situations of immediacy; and, accommodations in judicial proceedings to facilitate older people's effective role as participants.
- States should take account of accumulating discrimination when fashioning redress and reparation for age discrimination, including where appropriate in any award of damages.

## **2. Normative content for the right to freedom from violence, abuse and neglect**

Older people have the right to freedom from violence, abuse and neglect.

### **All forms of violence, abuse and neglect**

- The right to freedom from violence, abuse and neglect in older age should include all forms of violence, abuse and neglect against older people.

### **Public and private spheres**

- The right should apply to violence, abuse and neglect in private and public settings.
- Acts perpetrated by both private and public actors should fall under the right.
- States may be responsible for private acts of violence, abuse and neglect against older people if they fail to act with due diligence to prevent, protect, prosecute, punish and provide redress for the harm suffered.

### **Prevention**

- States should have an obligation to take steps to prevent violence, abuse and neglect in older age in relation to, inter alia, legislation and its effective implementation; training of care providers, health care and social workers, the judiciary and law enforcement; appropriate needs assessments, regulation and monitoring of situations of care and support provision; public prevention campaigns; and research into the intersectional drivers of violence.

### **Support services**

- The right should provide for access to a range of support services for survivors of violence, abuse and neglect, including but not limited to a full range of medical, psychosocial, rehabilitative and legal services; access to information about available support and services; access to appropriate victims support services; and access to effective remedies and redress.

### **Remedies and redress**

- The right should provide an obligation on states to assist survivors with making complaints.
- The right should provide an obligation on states to investigate and lay criminal charges.
- The state should begin with the assumption that the individual is best placed to judge his or her own well-being and observe self-determination for the survivor.
- Criminal justice responses, criminal offences and sentencing practices should reflect the aggravated nature of offenses against older people.
- Older age should not limit compensatory damages or access to survivor services.

### **Data and statistics**

- The right should provide an obligation on states to collect, disaggregate, analyze, utilise and make public at regular intervals appropriate information and statistical data on all forms of violence, abuse and neglect.
- This should include prevalence and trends, risk factors, perpetrators, access to support services and effective remedies and redress.
- All information gathering and research should comply with internationally accepted norms and ethical principles in the collection and use of statistics and legally established safeguards and should respect the privacy and confidentiality of older people.

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