

**Human rights of older persons:
International human rights principles and standards**

**BACKGROUND PAPER
Expert Group Meeting¹**

Geneva, 25 and 26 May 2010

Palais des Nations (Room XXIII)

¹ General Assembly resolution 64/132 on “Follow-up to the Second World Assembly on Ageing” requested the Secretary General “to submit to the General Assembly at its sixty-fifth session, a comprehensive report on the current status of the social situation, well-being, development and rights of older persons at the national and regional levels.” The United Nations Department of Economic and Social Affairs (UNDESA) has sought the support of the Office of the High Commissioner for Human Rights (OHCHR) to contribute a human rights perspective to the report, including through the preparation of a discussion paper focusing on existing international human rights standards as they apply to older persons. This paper offers a compilation and analysis of the work of treaty body monitoring mechanisms and of special procedures mandates in relation to the enjoyment of human rights by older persons.

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1. Introduction

This background paper starts with views about terminology and an overview of existing international human rights norms as they apply to older persons. Following, it includes a summary of how international human rights mechanisms (treaty bodies and special procedures) have applied relevant norms to older persons.

Terminology in relation to this population group remains varied and evolving. As noted by the Committee on Economic, Social and Cultural Rights (CESCR) in 1995,

“[t]he terminology used to describe older persons varies considerably, even in international documents. It includes: "older persons", "the aged", "the elderly", "the third age", "the ageing", and, to denote persons more than 80 years of age, "the fourth age". The Committee opted for "older persons" (*in French, personnes âgées; in Spanish, personas mayores*), the term employed in General Assembly resolutions 47/5 and 48/98. According to the practice in the United Nations statistical services, these terms cover persons aged 60 and above (Eurostat, the statistical service of the European Union, considers "older persons" to mean persons aged 65 or above, since 65 is the most common age of retirement and the trend is towards later retirement still).”²

² See Committee on Economic, Social and Cultural Rights, General Comment No. 6 on “The economic, social and cultural rights of older persons”, E/1996/22, 8 December 1995, para. 9

Nonetheless, there remains different uses of terminology across States and, as such, a lack of comparability and precision as to whom specific laws, policies and standards apply and should apply.

Treaty body mechanisms have taken note of these discrepancies and of the impact on human rights of ambiguous or conflicting applications of age-specific policies. For example, the CESCR, noted with concern “the different retirement ages for men (65) and women (60), which in practice result in lower pensions for women”³ in Poland in 2002, and has also expressed concern about “the consequences of the recent changes to the public pension system [in Japan], which involved a gradual increase in the age of eligibility from 60 to 65 years. If the retirement age and the age for eligibility for public pension benefits do not coincide, there may be a loss of income for those who are obliged to retire before the age of 65”.⁴

Human rights are by definition universal. By virtue of the universal scope of all rights, the whole range of internationally recognized human rights standards and principles, as contained in core international human rights treaties, also covers and protects older persons.

The Covenants, on Economic, Social and Cultural Rights⁵ and on Civil and Political Rights⁶ include highly relevant provisions for the protection of human rights of older persons, such as the rights to health, to an adequate standard of living, to freedom from torture, legal capacity and equality before the law. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD) also contain provisions which are applicable to older persons within their relevant scope.

Despite the fact that the norms in existing international human rights treaties apply to older persons in the same way as to other persons, it has been argued that there is a gap in the international human rights system. Namely, there is no specific provision focusing on older persons,⁷ nor a universal human rights instrument on the rights of older persons, as is the case for other categories of persons such as women, children, persons with disabilities or migrant workers. Nevertheless, two human rights instruments contain explicit references to age:

³ Committee on Economic, Social and Cultural Rights, Concluding Observations, Poland, E/C.12/1/Add.82, 19 December 2002.

⁴ Committee on Economic, Social and Cultural Rights, Concluding Observations, Japan, E/C.12/1/Add.67, 24 September 2001.

⁵ As of 26 April 2010, the International Covenant on Economic, Social and Cultural Rights has been ratified by 160 States.

⁶ As of 26 April 2010, the International Covenant on Civil and Political Rights has been ratified by 165 States.

⁷ Unlike regional human rights instruments, which specifically mention older persons, such as for example, African Charter of Human and Peoples' Rights, article 18(4); Protocol of San Salvador, article 17; Revised European Social Charter, article 23.

1. The International Convention on the Protection of the Rights of Migrant Workers and the members of their families (ICMW), which includes “age” in the list of prohibited grounds for discrimination.⁸
2. The CRPD includes miscellaneous references to older persons in article 25 (b) on the right to health, and in article 28(2)(b) on the right to an adequate standard of living. Additionally, there are references to age-appropriate access to justice in article 13; and to age-sensitive measures of protection in article 16.

In fact, CRPD merits closer examination for various reasons. While not all older persons are disabled and ageing should not be equated to a disability in and of itself, many older persons are persons with disabilities and their human rights are covered by this new instrument. There is no doubt that ageing can often lead to physical, mental, intellectual or sensory impairments and that this Convention offers unexplored potential to respond to the human rights issues affecting them.

Treaty bodies have interpreted and applied existing norms to older persons despite the lack of a specific instrument on the rights of older persons. In 1995, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 6⁹ which offers a detailed interpretation of the specific obligations of State parties regarding each of the rights contained in the International Covenant on Economic, Social and Cultural Rights, as they apply to older persons. Similarly, the Committee on the Elimination of Discrimination against Women is presently discussing the adoption of a General Recommendation on older women and the protection of their human rights under the CEDAW.

Human rights treaty bodies have also referred to non-binding United Nations documents and other international documents on ageing and on older persons to clarify existing provisions, and to assist them in the interpretation of the content of a given right in reference to older persons. For example, the Committee on Economic, Social and Cultural Rights has made extensive reference to the 1982 Vienna International Plan of Action on Ageing, the 1991 United Nations Principles for Older Persons, the 1992 Global targets on ageing for the year 2001, and the 1992 Proclamation on Ageing.¹⁰

Among these non-binding instruments, the Political Declaration and the Madrid International Plan of Action on Ageing adopted at the Second World Assembly on Ageing in April 2002, and endorsed by the General Assembly in resolution 57/167 of 18 December 2002 constitutes the most recent UN document on ageing.¹¹ It has guided the development of legislation and policies at the national level and has provided a framework for dialogue at international fora. The Political Declaration reaffirms the commitment to promote and protect human rights, to the elimination of age discrimination, neglect, abuse and violence (article 5) and makes

⁸ See Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, article 7.

⁹ See Committee on Economic, Social and Cultural Rights, General Comment No. 6, “The economic, social and cultural rights of older persons”, E/1996/22, 8 December 1995.

¹⁰ See General Comment No. 6, cit., paras. 4-7, 19, 21, 31-34 and 37-42.

¹¹ General Assembly resolutions in follow up to the Madrid Plan of Action have underlined the importance of implementing the plan: resolutions 60/135 (2005), 61/142 (2006), 62/130 (2007), 63/151 (2008) and 64/132 (2009). This background paper is presented as a contribution to the preparation of the report by the Secretary-General pursuant to the most recent of this resolution

references to the right to health (article 14), the opportunity to work and the continuing access to education and training programmes (article 12).

2. Application by international human rights mechanisms of existing norms to older persons

The following subsections summarize the issues and norms which international human rights mechanisms have applied to the rights of older persons, including non-discrimination, special needs, and the right to social security, the right to health and the right to adequate housing. They also underscore approaches taken by international human rights bodies to address and characterize critical issues, such as poverty of older men and older women. Overall, international human rights mechanisms have placed more emphasis on State obligations vis-à-vis economic, social and cultural rights, notably the right to social security, to health and to adequate housing, than on issues relating to civil and political rights.

a. Non-discrimination

The prohibition of discrimination is one of the pillars of international human rights law, hence *de jure* and *de facto* discrimination against any individual is at the center of the human rights discourse. The prohibition of discrimination is provided for in [all] international human rights treaties.

Discrimination has been defined as any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹²

Elements of the definition include:

- a) The principle of non-discrimination applies to all individuals in the consideration of their human rights and fundamental freedoms, including economic, social and cultural rights.
- b) The principle of non-discrimination is linked to and complemented by the principle of equality. In practical terms these two principles must be carefully crafted into legislation, policies, programmes, procedures and practices, each with its own specificities.
- c) Discrimination means distinctions, as well as exclusions or restrictions made on specific grounds. States are required to ensure that they adequately address human rights issues by abstaining from discrimination (negative obligations) as well as by taking actions (positive obligations) to prevent a violation of the principle of non-discrimination.¹³

¹² See for example Art. 1 CEDAW and Art. 2 CRPD.

¹³ See, generally, Human Rights Committee, General Comment No. 18, "Non-discrimination", HRI/GEN/1/Rev.6 at 146, 10 November 1989, paras. 7-10; Committee on Economic, Social and Cultural Rights, OHCHR- June 2010

- d) Such distinctions, exclusions or restrictions constitute violations, whether they have the effect – the objective outcome – or the intent – the discriminatory intention – of impairing or nullifying the exercise of any right by a particular individual.

Further, international human rights treaties require States to abstain from making de facto or de jure distinctions that can arbitrarily deny or restrict the full recognition or enjoyment of any human right, on the basis of a number of prohibited grounds.

Two international treaties, as mentioned above, refer to ‘age’ specifically as a prohibited ground of discrimination: article 7 of ICMW, which lists “sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”, and various articles of CPRD which mention age, inter alia, as a potential source of multiple or aggravated discrimination, when combined with disability.¹⁴ Typically, other international human rights instruments list the following as prohibited grounds of discrimination: race, colour, sex, language, religion or political opinion.¹⁵ While “age” is not explicitly listed as a prohibited ground the lists are illustrative and non-exhaustive, and usually include an open-ended category (“other status”), which has provided the opportunity for Committees, in some cases, for the consideration of “age”- related discrimination.

The CESCR has consistently taken this approach¹⁶, and held that “(a)ge is a prohibited ground of discrimination in several contexts”.¹⁷ In this regard, it has highlighted “the need to address discrimination against unemployed older persons in finding work, or accessing professional training or retraining, and against older persons living in poverty with unequal access to universal old-age pensions due to their place of residence”.¹⁸ It also held that State parties “need to take measures to prevent discrimination on grounds of age in employment and occupation”.¹⁹

Rights, General Comment No. 20, “Non-discrimination in economic, social and cultural rights”, E/C.12/GC/20, 10 June 2009, paras. 7-9.

¹⁴ See Convention on the Rights of Persons with Disabilities, Preamble, para. (p) and article 8 (1) (b). It also requires “age-appropriate” accommodation regarding access to justice (article 13(1)); “age-sensitive” assistance to prevent exploitation, violence and abuse (article 16(2)); provide “services designed to minimize and prevent further disabilities among... older persons” in the context of the right to health (article 25); and article 28(2)(b) requires States parties to “ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.”

¹⁵ See, for example, International Covenant on Civil and Political Rights, article 2(1): “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; International Covenant on Economic, Social and Cultural Rights, article 2(2), “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

¹⁶ See General Comment No. 6, cit., paras. 11-12; General Comment No. 20, cit., para. 29.

¹⁷ See General Comment No. 20, “Non-discrimination in economic, social and cultural rights”, cit., para. 29.

¹⁸ See General Comment No. 20, “Non-discrimination in economic, social and cultural rights”, cit., para. 29. See also General Comment No. 6, cit., para. 22.

¹⁹ See Committee on Economic, Social and Cultural Rights, General Comment No. 18, “The right to work”, E/C.12/GC/18, 6 February 2006, para. 16.

Significantly, article 26 of ICCPR provides for the protection of equality before the law, including a guarantee for effective protection against discrimination on *any other ground*. The Human Rights Committee has held that “while age as such is not mentioned as one of the enumerated grounds of prohibited discrimination in the second sentence of article 26, the Committee takes the view that a distinction related to age which is not based on reasonable and objective criteria may amount to discrimination on the ground of “other status” under the clause in question, or to a denial of the equal protection of the law within the meaning of the first sentence of article 26”²⁰, and has confirmed this approach in a number of individual communications.²¹ The Human Rights Committee has further clarified that article 26 encompasses the prohibition of discrimination in law or in practice in *any* field regulated and protected by public authorities, including in relation to the right to social security, such as in the case of a married woman and unemployment benefits. While article 26 did not require the State in that case to enact social security legislation, if the State did adopt legislation, then the law had to comply with article 26 – whether the legislation related to an article in the ICCPR or any other area, including a right under the ICESCR.²²

Multiple discrimination, or the fact some individuals face discrimination on more than one ground, is a particularly complex issue for consideration and for remedying. In the preamble to its resolution 7/24, the Human Rights Council, has expressed its “deep concern for multiple or aggravated forms of discrimination and disadvantage that [can]lead to the particular targeting or vulnerability to violence of some groups of women, such as women belonging to minority groups, indigenous women, refugee and internally displaced women, migrant women... women with disabilities, elderly women, widows and women in situations of armed conflict” (emphasis added).²³ Violence against women has been understood to encompass, but not be limited to, physical, sexual or psychological violence occurring in the family, within the general community, or perpetrated or condoned by the State wherever it occurs.²⁴ Some elements of this definition could shed light on a better understanding of violence and abuse of older women and men, its human rights connotations and its close link with discrimination.

In a working paper prepared by Ms. Chinsung Chung as member of the Human Rights Council Advisory Committee, “ageism” is discussed as “the stereotyping and prejudice

²⁰ *Love et al. v. Australia*, Communication No. 983/2001, views of 25 March 2003, para. 8.2:

²¹ See Human Rights Committee, *Schmitz-de-Jong v. The Netherlands*, Communication No 855/1999, views of 16 July 2001 (minimum age limit for senior citizen’s partner’s pass found objective and reasonable); *Love et al. v. Australia*, cit. (mandatory age of retirement for pilots found objective and reasonable), *Solís v. Peru*, Communication No. 1016/2001, views of 27 March 2006 (age as a criteria for dismissal from public service for reasons relating to the reorganization of public bodies found objective and reasonable); *Althammer et al. v. Austria*, Communication No. 998/2001, views of 8 August 2003 (the abolition of monthly household payments found to be based on objective and reasonable criteria).

²² Human Rights Committee, communication No. 182/1984, *FH Zwaan-de Vries v. The Netherlands*, views adopted on 9 April 1987, CCPR/C/29/D/182/1984.

²³ Multiple discrimination is also a critical dimension in the consideration of reports by CEDAW and CESCR. See, for instance, Committee on Economic, Social and Cultural Rights, General Comment No. 20, “The economic, social and cultural rights of older persons”, para. 17

²⁴ General Assembly Resolution 48/104

against older people that can lead to age discrimination”. In this context, illustrative examples range from neglect and negative stereotyping of the capacities of older people to situations such as those of primary healthcare services, few of which actually “include services specifically designed for the elderly, sometimes health workers may refuse to treat older persons because of their age or because they lack the training on age-related illnesses and palliative care.”²⁵

b. Vulnerabilities and special protection

Beyond the prohibition of discrimination on the ground of age, human rights mechanisms have also identified older persons as being a vulnerable group requiring special measures of protection. Specifically, article 16(1) of the CPRD requires “age-sensitive” assistance and support for persons with disabilities and their families to prevent exploitation, violence and abuse, thereby recognizing the particular vulnerabilities of older persons.

The CESCR has held that “[s]ide by side with older persons who are in good health and whose financial situation is acceptable, there are many who do not have adequate means of support, even in developed countries, and who feature prominently among the most vulnerable, marginal and unprotected groups.”²⁶ Further, it has consistently included older persons in the list of groups that could potentially suffer disadvantages, vulnerability or marginalization.²⁷ Similarly, the CEDAW has identified older women as a potentially vulnerable and disadvantaged group in its General Recommendation on women and health, and is currently discussing a specific General Recommendation on older women.²⁸

The Committee against Torture has also specifically clarified that State parties should prohibit, prevent and redress torture and ill-treatment including, *inter alia*, in institutions that engage in the care of the aged.²⁹ The Special Rapporteur on torture and other cruel, inhuman

²⁵ See Working Paper prepared by Ms. Chinsung Chung, Human Rights Council Advisory Committee, A/HRC/AC/4/CRP.1, 4 December 2009, para. 8. While not endorsed by the Human Rights Council (see President’s Statement A/HRC/13/PRST/1), the Working Paper provides a useful survey of issues for consideration.

²⁶ See Committee on Economic, Social and Cultural Rights, General Comment No. 6, “The economic, social and cultural rights of older persons”, cit., para. 17.

²⁷ See Committee on Economic, Social and Cultural Rights, General Comment No. 4, “The right to adequate housing”, E/1992/23, 13 December 1991, para. 8 (e); General Comment No. 7, “The right to adequate housing: forced evictions”, E/1998/22, 20 May 1997, para. 10; General Comment No. 12, “The right to adequate food”, E/C.12/1999/5, 12 May 1999, para. 13; General Comment No. 14, “The right to the highest attainable standard of health”, E/C.12/2000/4, 11 August 2000, para. 12; General Comment 15, “The right to water”, E/C.12/2002/11, 20 January 2003, para. 16(h).

²⁸ See Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, “Women and health”, Twentieth session, 1999, U.N. Doc. A/54/38 at 5, para. 6.

²⁹ See Committee against Torture, General Comment No 2, “Implementation of article 2 by States parties”, CAT/C/GC/2, 24 January 2008, para 15.

or degrading treatment or punishment has likewise underscored that the elderly are among the highly vulnerable in general detention facilities and in psychiatric institutions.³⁰

In addition, the Human Rights Committee has noted “the vulnerable situation of older persons placed in long-term care homes, which in some instances has resulted in degrading treatment and violated their right to human dignity”³¹, while the Committee on the Elimination of Racial Discrimination has also acknowledged that “the economic sanctions applied against Iraq have resulted in a significant lack of basic foods and medicine, and the population, especially children and older persons, have suffered gravely from malnutrition and lack of medical care, with fatal consequences.”³²

The examination of reports by the Human Rights Council under the universal periodic review mechanism has also lead to recommendations involving the particular vulnerabilities of older persons. Interestingly, good practices and existing policies and programmes have been invoked, including a call for their strengthening (Cuba³³) or for dissemination to other members and the international community (Monaco³⁴). On a less positive tone, China³⁵ has been called to intensify efforts to eradicate poverty and improve health infrastructure and access to services for vulnerable groups such as the elderly; and both Senegal³⁶ and the United Kingdom³⁷ have been called to pursue policies and provide care to older persons and more attention to their rights.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, has highlighted the vulnerability of older persons in detention facilities. As stated by the Special Rapporteur, “[m]any detainees complained that they felt like they were treated worse than animals. Indeed, most human beings would not like their dogs or cats to be treated in the same way that many human beings are treated in detention. [...] Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination”.³⁸

³⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. “Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention”, February 5, 2010. A/HRC/13/39/Add.5, para. 237.

³¹ See Human Rights Committee, Concluding Observations, Germany, CCPR/CO/80/DEU, 4 May 2004, para. 17.

³² See Committee on the Elimination of Racial Discrimination, Concluding Observations, Iraq (1997), para. 258, Fifty-second Session, Supplement No. 18 (A/52/18).

³³ See Human Rights Council, A/HRC/11/22, para.130.7.

³⁴ See Human Rights Council, A/HRC/12/3, para. 80.21.

³⁵ See Human Rights Council, A/HRC/11/25, para. 114.20.

³⁶ See the Human Rights Council, A/HRC/11/24, para.97.13.

³⁷ See Human Rights Council, A/HRC/8/25, para. 56.17.

³⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. “Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention”, February 5, 2010. A/HRC/13/39/Add.5, paras. 231 and 257.

A working paper prepared by a member of the Human Rights Council Advisory Committee notes that “elderly people, can be more vulnerable in natural disasters or situation of armed conflict” [...] “they are unable to escape because of disabilities, lack of mobility or lack of physical strength and become victims of violence and reprisals. They are left isolated, destitute and without support systems when families and communities disintegrate. Those unable to get to registration centers in camps frequently miss out on food and health programmes. Older asylum seekers, older refugees and stateless older people are therefore more vulnerable”.³⁹

c. Special measures for specific groups

Some human rights mechanisms have addressed the human rights of older persons by acknowledging the need for age-specific measures. This does not necessarily require qualifying older persons as being in a vulnerable or marginalized situation: special measures can be understood as average specific age-group requirements in comparison with other age-groups. For example, article 25(b) of the CPRD requires that health services be “designed to minimize and prevent further disabilities, including among children and older persons.”

Moreover, the CESCR has recommended that health policies take particularly into account the needs of the elderly, “ranging from prevention and rehabilitation to the care of the terminally ill”⁴⁰, and has reaffirmed “the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. Such measures should be based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.”⁴¹

Similarly, the CESCR held that “older persons should have access to suitable education programmes and training and should, therefore, on the basis of their preparation, abilities and motivation, be given access to the various levels of education through the adoption of appropriate measures regarding literacy training, life-long education, access to university, etc.”⁴²

With regard to the right to housing, the CESCR has endorsed some of the recommendations of the Vienna International Plan of Action on Ageing, noting that “national policies should help older persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them”. The Committee has also underscored that urban rebuilding and development planning and law needs “to pay special attention to the problems of the ageing, assisting in securing their social integration”; and that there is a need “to take account of the functional capacity of the elderly in order to provide them with a

³⁹ See Working paper prepared by Ms. Chinsung Chung, Human Rights Council Advisory Committee, cit., paras. 19 and 20. See also the Inter Agency Standing Committee brief on Humanitarian Action and Older Persons (2008).

⁴⁰ See General Comment No. 6, cit., paras. 34-35.

⁴¹ See General Comment No. 14, cit., para. 25.

⁴² See General Comment No. 6, , cit., para. 37.

better living environment and facilitate mobility and communication through the provision of adequate means of transport.”⁴³

d. The right to social security, and the issue of social protection

Age plays a particularly prominent role in the right to social security and old age is generally acknowledged as one of the main “contingencies” or “branches” of social security in international law.⁴⁴

The CESCR has recognized that old age is one of the contingencies to be covered by social security⁴⁵, and held that “(t)he International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although article 9 which provides for “the right of everyone to social security, including social insurance”, implicitly recognizes the right to old-age benefits.”⁴⁶

The CESCR has also clarified that the right to social security encompasses both contributory, insurance-type schemes and non-contributory, tax-funded schemes (sometimes referred to as “social assistance”).⁴⁷

It has stated that the following elements are inherent in the right to old-age benefits:

- States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.⁴⁸
- State parties should consider establishing a retirement age that is flexible, taking into account the national circumstances, the occupations performed – in particular work in hazardous occupations – and the working ability of older persons, with due regard to demographic, economic and social factors.⁴⁹
- States parties must guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.⁵⁰
- States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.⁵¹

⁴³ See General Comment No. 6, cit., para. 33.

⁴⁴ See ILO C 102, Social Security (Minimum Standard) Convention (1952), part V.

⁴⁵ See General Comment No. 6, cit., paras. 26-30; General Comment No. 19, “The right to social security”, E/C.12/GC/19, 4 February 2008, para. 15.

⁴⁶ See General Comment No. 6, cit., para. 10.

⁴⁷ See General Comment No. 6, cit., para. 30; General Comment No. 19, cit., para. 4.

⁴⁸ See General Comment No. 6, cit., para. 27; General Comment No. 19, cit., para. 15.

⁴⁹ See General Comment No. 6, cit., para. 28; General Comment No. 19, cit., para. 15.

⁵⁰ See General Comment No. 6, cit., para. 29.

⁵¹ See General Comment No. 6, cit., para. 30; General Comment No. 19, cit., para. 15.

The CESCR has noted with concern the low coverage of old-age pensions and the broader context of social protection systems for older persons. It recommended that Slovenia, in 2005, “extend the network of integrated health and social care services, including home help, for older persons with physical and mental disabilities. The Committee requests the State party to provide in its next periodic report, detailed information on the implementation of the overall strategy for older persons which is presently under consideration”.⁵² When considering Nicaragua’s report in 2008, the Committee noted with concern the small percentage of the population entitled to universal old-age pension (13.85 per cent) and encouraged the State to “adopt a welfare programme enabling older persons to live a decent life”.⁵³

In its consideration of the report of Serbia and Montenegro, the Committee further considered the preference for home care in the context of poverty. It recommended that, “in applying its Poverty Reduction Strategy, the State party take special measures to alleviate the extent of poverty among older persons and that priority be given to home care rather than institutionalization of older persons in need of care. The State party should allocate sufficient funds to that effect and strengthen the role of non-profit organizations in the provision of home care and other social services”.⁵⁴

The Committee has also raised concerns about the potential discriminatory impact of old-age pension benefits on specific groups.⁵⁵ Concretely, the Committee requested that Austria provided “comparative statistical data on the levels of old-age pensions, disaggregated by sex, number of children, income groups and other relevant criteria, so as to enable an assessment of the impact of the Law on the pension benefits of women and of members of disadvantaged and marginalized groups who are frequently exposed to interruptions of their professional careers.”

The Independent Expert on Human Rights and Extreme Poverty has recently addressed the issue of non-contributory or social pensions of older persons, as an important dimension of social security systems. This is the first report of a special procedures mandate focusing the attention on the situation of older persons. Her report stresses the low coverage of contributory pension schemes and highlights that “non-contributory pensions can significantly reduce poverty and vulnerability among old people, in particular for women, who live longer and are less likely to benefit from contributory systems”. It also provides

⁵² Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of The Covenant, Slovenia, E/C.12/SVN/CO/1, Thirty-fifth session Geneva, 7-25 November 2005, para. 35.

⁵³ Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of The Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Nicaragua, E/C.12/NIC/CO/4, Forty-first session Geneva, 3-21 November 2008, para. 22.

⁵⁴ Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Serbia and Montenegro, E/C.12/1/Add.108, Thirty-fourth session 25 April-13 May 2005, para. 8.

⁵⁵ Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Austria, E/C.12/AUT/CO/3, Thirty-fifth session 7-25 November 2005, para. 25.

recommendations to ensure that non-contributory pensions comply with core human rights standards.⁵⁶

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance considered the issue of exclusion of pension systems during his mission to Japan in 2005, and recommended that the “Government should adopt remedial measures for Koreans who are more than 70 years old and who have no access to pension benefits because of the existence of the nationality clause when they were of working age”.⁵⁷

The Representative of the Secretary-General on the human rights of internally displaced persons raised concern about the lack or insufficient social protection of internally displaced older persons during his mission to Colombia in 2006 and recommended *inter alia* “the adoption of special measures to take into account the particular health and assistance needs of elderly persons, including those who have to take care of children left with them by their parents”.⁵⁸

e. Universal design and accessibility

The Convention on the Rights of Persons with Disabilities includes the concept of “universal design”, that is “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design”⁵⁹, and develops State obligations regarding the promotion of the availability and use of universally designed goods, services, equipment and facilities.

The concept of “universal design” can benefit, *inter alia*, older persons, many of whom may also be persons with disabilities. In addition, State party obligations to ensure physical and communicational accessibility can also be of relevance to older persons. For example, inaccessible buildings or services restrict the possibilities of exercising freedom of movement both for persons with disabilities and for older persons, or for the combination of both: older persons with disabilities.

The CESCR has also identified accessibility – including physical accessibility – as a key component of the normative content of the rights contained in the Covenant, and has noted to States parties that accessibility should be ensured in order to allow the full exercise of those rights by older persons.⁶⁰

⁵⁶ See Report of the Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda, A/HRC/14/31, 18 March 2010.

⁵⁷ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, Mission to Japan, E/CN.4/2006/16/Add., 24 January 2006, paras. 91 and 56.

⁵⁸ Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin Addendum, Mission to Colombia, A/HRC/4/38/Add.3, 24 January 2007, para. 83

⁵⁹ See Convention on the Rights of Persons with Disabilities, article 2, final paragraph.

⁶⁰ See Committee on Economic, Social and Cultural Rights, General Comment No. 4, “The right to adequate housing”, *cit.*, para. 8 (e); General Comment No. 12, “The right to adequate food”, *cit.*, para. 13; General Comment No. 14, “The right to the highest attainable standard of health”, *cit.*, para. 12 (b); General Comment 15, “The right to water”, *cit.*, para. 12(c)(i); General Comment No. 21, “Right of everyone to participate in cultural life”, E/C.12/GC/21, 21 December 2009, para. 16(b).

f. Poverty and marginalization of older women

Poverty of older women has been a major issue of concern for the Committee on the Elimination of Discrimination against Women. For instance, in 2002, in its concluding observations related to the change in pension systems in Iceland, the Committee recommended that the State party study the impact of the pension system on women and take appropriate measures to avoid poverty amongst older women.⁶¹ Similarly, in its concluding observations to France in 2008 “the Committee remain[ed] concerned that specifically targeted measures to combat the marginalization of older women, including immigrant and migrant women, are missing” and encouraged the State to develop an overall policy and programmes targeted specifically at the elimination of marginalization of older women, and include the results in its next periodic report.⁶²

In 2008, during its consideration of the report of Tanzania, the CEDAW considered the social situation of older women more broadly, and “recommend[ed] that the State party pay special attention to the precarious situation of older women and women with disabilities, to ensure that they have full access to health and social services and to decision-making processes, and that they have adequate jobs in the labour market, as appropriate. The Committee further urges the State party to adopt special programmes to alleviate poverty within these groups of women, and to combat all forms of discrimination against them. The Committee also urg[ed] the State party to challenge traditional views regarding older women, particularly accusations of witchcraft [...]”.⁶³

Similarly, the Committee on Elimination of Discrimination against Women expressed concern in its concluding observations on Germany in 2009 “about some negative impact on women of the Fourth Law for Modern Services in the Labour Market, which entered into force on 1 January 2005, namely the increase of financial dependence of unemployed women on husbands or partners resulting from the introduction of “needs units” and the proportional increase of women whose access to benefits has been denied. [...] The Committee wishes to draw the State party’s attention to the disadvantaged situation of women who interrupt their careers for family reasons and the related consequences on retirement and old-age pensions. The Committee expresses further concern at the 2007 Pension Reform Act, which raised the age of retirement to 67 years and as a result of which only 2.48 per cent of women meet the requirement of 45 years of contributing to the pension fund without incurring a loss in benefits.”⁶⁴

g. The right to health and the right to adequate housing

⁶¹ Committee on the Elimination of Discrimination against Women, see Concluding Observation, Iceland, A/57/38, 2002, para. 250.

⁶² Committee on the Elimination of Discrimination against Women, Concluding Comments, France, C/FRA/CO/6, Fortieth session 14 January-1 February 2008, paras. 38-39.

⁶³ CEDAW, Draft concluding observations of the Committee on the Elimination of Discrimination against Women: United Republic of Tanzania, Cedaw/CTZA/CO/6, para. 45 and 46.

⁶⁴ Committee on the Elimination of Discrimination against Women, Concluding Observations, Germany, CEDAW/C/DEU/CO/6, 12 February 2009.

The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health underscored the need for measures to ensure the enjoyment of human rights by older persons in relation to training of health professionals, to the design and implementation of national health systems compliant with a human rights based approach and finally in relation to pharmaceutical companies.

When referring to the importance of community participation and information sharing, the Special Rapporteur noted that a national health system “must be responsive to both national and local priorities. Properly trained community health workers such as village health teams know their communities’ health priorities. Also, inclusive participation can help to ensure that the health system is responsive to the particular health needs of women, children, and adolescents, the elderly and other disadvantaged groups. Inclusive, informed and active community participation is a vital element of the right to health”.⁶⁵ Similarly, he noted that “[a] State has a legal obligation to ensure that a health system is accessible to all without discrimination, including those living in poverty, minorities, indigenous peoples, women, children, slum and rural dwellers, people with disabilities, and other disadvantaged individuals and communities. Also, the health system must be responsive to the particular health needs of women, children, adolescents, the elderly, and so on. The twin human rights principles of equality and non-discrimination mean that outreach (and other) programmes must be in place to ensure that disadvantaged individuals and communities enjoy, in practice, the same access as those who are more advantaged”.⁶⁶

When discussing the human rights responsibilities of pharmaceutical companies in relation to access to medicines, the former Special Rapporteur on the right to health developed a set of voluntary guidelines which include older persons in the section of disadvantaged individuals, communities and populations. The Special Rapporteur suggested that “whenever formulating and implementing its strategies, policies, programmes, projects and activities that bear upon access to medicines, the company should give particular attention to the needs of disadvantaged individuals, communities and populations, such as children, the elderly and those living in poverty”.⁶⁷

Regarding the right to adequate housing, the former Special Rapporteur on adequate housing, developed Basic Principles and Guidelines on Development-based Evictions and Displacement calling for “[p]riority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities.[...] Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.”⁶⁸

⁶⁵ Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, E/CN.4/2006/48, 3 March 2006, para. 7.

⁶⁶ Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, A/HRC/7/11, 31 January 2008, para. 42.

⁶⁷ Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. A/63/263, 11 August 2008, Annex para. 5.

⁶⁸ Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, Basic Principles and Guidelines on Development-Based Evictions and Displacement, A/HRC/4/18, 5 February 2007, Annex I, paras. 31 and 33.

3. Some conclusions and recent developments

Explicit references to older persons or to “age” as a ground of discrimination are scarce in international human rights instruments. However, existing instruments have provided a number of entry points for human rights mechanisms to address issues of concern for older persons; some mechanisms have developed specific standards, on the basis of generally recognized rights and principles, and addressed relevant issues; while others have not specifically addressed the human rights of older persons as a separate issue.

Older persons are not a homogenous group, and the challenges they face in exercising their human rights vary greatly. However, when discussing the human rights of older persons, multiple discrimination appears as an essential component of any analysis, particularly age linked to other grounds such as sex, socio-economic status, ethnicity, and health status.

While older age must not be equated to disabilities, and not all older persons have a disability, there are many older persons with disabilities. Furthermore, the Convention on the Rights of Persons with Disabilities has the potential to expand key human rights notions which can also positively impact on the protection of older persons’ rights such as accessibility, legal capacity, special age-related or mobility-related measures and mechanisms for inclusion and diversity in social life.

Further clarity is needed in several fields, first and foremost the definition and understanding of age-related discrimination. Of note is that, thus far, only a narrow set of rights have been considered by international human rights mechanisms when addressing older persons, while other issues around legal capacity, access to judicial remedies, mandatory retirement age, the right to work and labour-related standards after retirement, informed consent for health treatments, freedom of movement and freedom from torture, including in old-care centers and institutions, would require further interpretation and application by these mechanisms. In pursuing these issues, human rights mechanisms may wish to look to non-binding instruments which specifically refer to older persons, notably the Madrid Plan of Action. Additionally, treaty body mechanisms and the Special Procedures could be encouraged to reflect on these issues through days of discussion, informal dialogues with experts, with associations of older persons, and with civil society organizations working in this field; and consider recommending that States systematically report on the human rights of older persons.

In recent years, civil society and public opinion have increasingly addressed the issue of older persons through a human rights perspective. Organizations and other stakeholders have advocated that a new comprehensive international instrument to protect the rights of older persons is required. Arguments in favour of a new instrument lie in the current lack of a dedicated instrument, the fragmentation of issues across the existing international human rights treaties, the inconsistency in focus adopted by different mechanisms, and the increasing demand for States to adopt comprehensive measures to address the demographic shift. Indeed, virtually all regions in the world will face considerable challenges with regard to older persons by 2050. Some supporters of a new instrument have also argued that adopting a specific instrument would provide a focal point and authoritative basis for advocacy, and would increase the visibility of the issues of older persons in national law making and policy design. Finally, a specialized Committee could offer guidance for policy makers, legislators and courts about the rights of older persons and facilitate comparative

exchange.⁶⁹

Some civil society organizations have also advocated for the creation of a Special Procedure mandate under the Human Rights Council with a focus on the rights of older persons, as a clear sign of support from the international human rights machinery for visibility to the issue. A Special Rapporteur could play a critical role in shedding light on the many human rights issues which are faced by older men and women around the world, and provide guidance and development on the scope and content of existing standards. Further, a Special Procedure mandate could potentially provide targeted support to States in the design, implementation and monitoring of legislation, policies and programmes addressing the issues of older persons. It could as well bring a coherent singular approach drawing from multiple instruments.⁷⁰

Using current mechanisms and instruments does not preclude other developments in the human rights machinery. In fact, there is consensus about the importance of bringing older persons to the fore of the human rights agenda at the national and international levels. As the High Commissioner, Ms. Navanethem Pillay, noted: “To fully realize the whole range of rights of older persons now and in the future, a variety of concerted and strategic actions need to be taken. All of us have a role to play in achieving the goals of independence, equal participation, appropriate care, self-fulfillment and dignity of older persons [...] We must all accept the inevitability of ageing. What we do not have to accept and must not accept is that old age brings with it a lesser access to and enjoyment of the full range of human rights.”⁷¹

⁶⁹ Conversely, others argue that existing international human rights instruments could be further utilized to advance the human rights of older persons; that States are already burdened with existing reporting and follow-up obligations; and point to the difficulties of negotiating an instrument which would require States to make special financial and budgetary commitments for its implementation in times of financial constraints and restraints in public policy.

⁷⁰ Some counter arguments have included the lack of sufficient resources to fund and sustain new mandates, the multiplicity of already existing mandates, the general limitations encountered in the advancement of rights by different mechanisms. For some, anchoring the issue of older persons within the work of several already existing mandates would provide more effective mainstreaming of the issues.

⁷¹ Statement by the United Nations High Commissioner for Human Rights, Ms. Navanethem Pillay, Expert Group Meeting on the Human Rights of Older Persons, Geneva, 26 May 2010.