



# Report by Telmo Languiller MP

Victoria, Australia

Delegate of the International Federation on Ageing at the fourth session  
of the Open Ended Working Group on Ageing, New York

12 - 15 August 2013



## Purpose of Report

As a delegate of the International Federation on Ageing (IFA) I attended the fourth session of the Open Ended Working Group on Ageing (OEWG) between the 12th and the 15th of August 2013. I have previously attended two of the earlier sessions of the OEWG in 2011 and 2012.

I have worked closely with the Secretary General of the IFA, Dr Jane Barratt, to advocate for the development of an enforceable international convention that would promote and protect the rights of ageing persons. Dr Jane Barratt and the IFA have played an integral role in advancing the agenda to develop such an instrument.

I would also like to show appreciation for the work of the Council of the Ageing (COTA) and its strong advocacy for the rights of ageing persons in Victoria and Australia. I would especially like to thank Sue Hendy, CEO of COTA, for both her dedication and perseverance in her promotion of older persons' rights and for personally introducing me to this agenda.

I would also like to acknowledge the excellent work Mr. Federico Villegas Beltrán, Chair of the fourth session of the Open Ended Working Group on Ageing and Director General for Human Rights, Ministry of Foreign Affairs, and International Trade and Worship in Argentina. I would also like to acknowledge the dedication and stewardship of Mr Mateo Estrémé, Chair of the OEWG in 2011 and 2012 and Deputy Permanent Representative of the Argentinian Permanent Mission to the United Nations. I commend both Chairs for their open and enthusiastic engagement with civil society.

I would also like to note the excellent work of the Hon Susan Ryan, Australia's first Age Discrimination Commissioner. Her enthusiasm and leadership of this agenda within both Australia and the Asia Pacific region will be of paramount importance to the achievement of an International Convention.

The key reasons for my attendance at the fourth session of the Open Ended Working Group include:

- To contribute to the development of an international ageing agenda that seeks to develop a convention to promote and protect the rights of older persons;
- To raise awareness of ageing related issues;
- To learn from the contributions made by civil society, NGOs and other states during the fourth session of the Open Ended Working Group on Ageing;
- To provide an Australian perspective during the proceedings of the Open Ended Working Group;
- To gather knowledge in order to further equip Australian stakeholders in their pursuit of an international convention addressing the rights of ageing persons.

## Background

### Development of the Open Ended Working Group on Ageing

General Assembly resolution 65/182 (2010) called for the development of the Open Ended Working Group on Ageing (OEWG). Per resolution 65/182 the mandate of the OEWG included:

- Protecting the human rights of ageing persons;
- Considering the current international framework that seeks to protect and promote the rights of ageing persons;
- Identifying the protection gaps that exist in the current international framework relating to the human rights of ageing persons; and
- Considering the feasibility of additional international mechanisms to promote and protect the rights of ageing persons.

The first organisational meeting of the OEWG was held in 2011, and there have been four subsequent working sessions. These working sessions consist of interactive panels that consider a number of age related issues and the international framework concerning the protection of older persons' human rights.

The first working session of the OEWG was held in 2011. This session considered the extent to which existing frameworks protect the rights of ageing persons. The second session of the OEWG thematically addressed the development of human rights issues facing older persons, including age-based discrimination, multiple discrimination, the right to the enjoyment of the highest attainable standard of physical and mental health, elder abuse and social exclusion. The third working session saw further development of these thematic issues facing older persons, including discussions on autonomy, access to justice and dignified living. The fourth working session of the OEWG was held this year in August.

So far, the Open Ended Working Group on Ageing has effectively facilitated dialogue between member states and civil society: encouraging the development of regional strategies to address issues facing ageing persons and effectively working towards the mainstreaming of age and human rights. We have seen the diversification of participant member states, with increased engagement from African and Asia Pacific states in recent sessions. Despite this, the number of states participating in the OEWG working sessions remain disappointingly low and it is imperative that we see this number increase in coming years. I would like to make special note of Australia's limited participation in the fourth session of the OEWG.

### The Madrid International Plan of Action on Ageing

The Madrid International Plan on Ageing and Political Declaration (MIPAA) was adopted in April 2002 at the Second World Assembly on Ageing. The document called for a comprehensive reassessment of national, regional and international policies relating to ageing persons, with the purpose to "build a society for all ages". While providing a detailed and thorough policy direction, the MIPAA aims to take into account the wide range of contexts of its signatories, who come from variety of regions and have diverse development experiences. It should be also noted that the political declaration attached to the MIPAA is a non-binding international instrument.

The Plan places ageing related issues and the rights of older persons within the broader context of global development. The MIPAA recognises the demographic pressure of ageing on societies

and economies, and highlights that preventative measures, such as empowering older persons and encouraging their participation in society are a priority.

There are three central policy directions included in the Madrid Plan:

Policy direction	Relevant issues
Older persons and Development	<ul style="list-style-type: none"><li>• Active participation in society and development</li><li>• Work and the ageing labour force</li><li>• Rural development, migration and urbanization</li><li>• Access to knowledge, education and training</li><li>• Intergenerational solidarity</li><li>• Eradication of poverty</li><li>• Income security, social protection/social security and poverty prevention</li><li>• Emergency situations</li></ul>
Advancing Health and Well-Being into Old Age	<ul style="list-style-type: none"><li>• Health promotion and well-being throughout life</li><li>• Universal and equal access to healthcare services Older persons and HIV/AIDS</li><li>• Training of care providers and health professionals</li><li>• Mental health needs of older persons</li><li>• Older persons and disabilities</li></ul>
Ensuring Enabling Environments	<ul style="list-style-type: none"><li>• Housing and the living environment</li><li>• Care and support for caregivers</li><li>• Neglect, abuse and violence</li><li>• Images of ageing</li></ul>

## The proceedings of the fourth Open Ended Working Group on Ageing

The fourth session of the Open Ended Group on Ageing was held in New York on the 12th to the 15th of August of this year under the chairmanship of Federico Villegas Beltrán. This session was largely influenced by the General Assembly's adoption of resolution 67/139 in December, which requires a compilation of the current international instruments relating to ageing to be presented during the fourth session.

Five interactive panels took place during the fourth session:

### Panel 1

Promotion and protection of human rights and dignity of older persons: contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing

### Panel 2

Update on multilateral processes

### Panel 3

Social security and the right to health



## Panel 4

### Discrimination and Access to Work

## Panel 5

Main findings of:

- (a) the Note Verbale in follow up to resolution A/RES/67/139; and
- (b) the Compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons

During the session, Argentina announced the development of The Group of Friends of Older Persons, a cross-regional body that aims to further promote the rights of ageing persons. The Group of Friends is open to all states that share its objectives.

There were 20 member states that delivered statements during the fourth session of the OEWG, and 31 participant states delivered a note verbale. The fourth session also saw a significant degree of participation from civil society groups. These groups primarily advocated for the development of an enforceable international framework that would empower older persons as rights holders.

## Demographic profile of ageing persons

### Finding a definition of ageing

It should firstly be noted that a concrete definition of 'ageing' or 'older person' is difficult to acquire. It should be noted that the concept of ageing is a social construct, influenced by cultural and societal norms. The UN statistical services considers 'older persons' to be those aged 60 and above, while other measures prefer persons aged 65 and above.

### International demographic profile of ageing persons

As a global population, we are experiencing an unprecedented increase in the number of persons who are ageing: by 2050 the UN Population Division has estimated that the proportion of the world's population over the age of 60 will increase from 11 per cent of the global population to 22 per cent

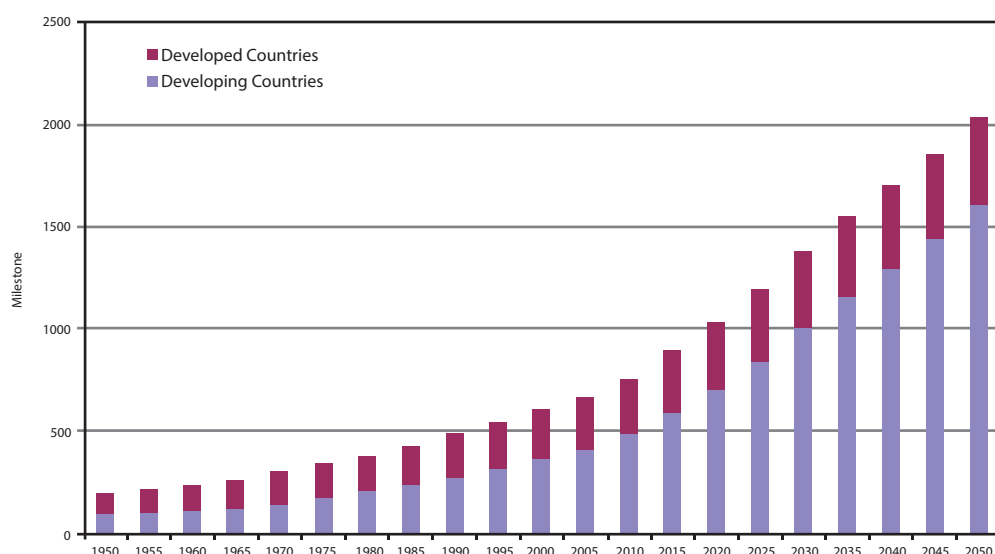
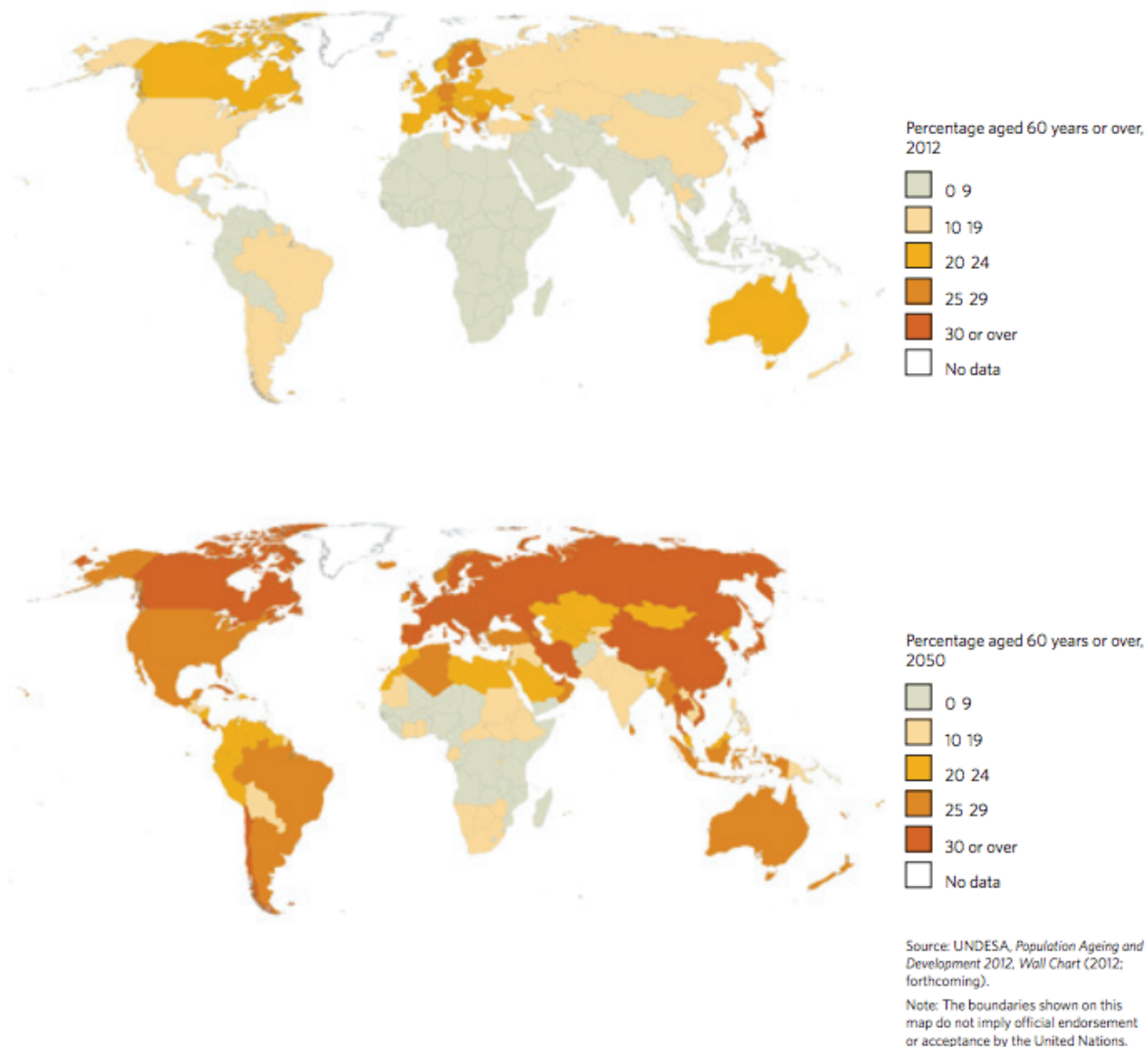


Figure 1: Number of people aged 60 or over: World, developed and developing countries, 1950 - 2050.<sup>1</sup>

<sup>1</sup>United Nations Population Fund, <http://www.unfpa.org/pds/ageing.html>



There are a number of factors that contribute to substantial increase in the ageing population. Firstly, older persons are experiencing increased longevity with the projected global life expectancy by 2050 to rise to 76 years. Secondly, the world is experiencing a rapid decline in fertility rates. Lastly, the ‘baby boomer’ generation is currently transitioning from ‘middle aged’ to ‘older age’.

Alongside the increase in both the number of ageing persons and overall life expectancy, the global population is experiencing the compression of morbidity; whereby the improvement in living standards and the dispersion of technologies is reducing the period of time in which older persons experience the ‘morbid years’.<sup>2</sup> This compression of morbidity will consequently increase the years of functional independence. A Harvard study projects that it can be “reasonably anticipated”<sup>3</sup> that ageing workers will be able to productively contribute to the labour market at an older age.

<sup>2</sup> The morbid years are associated with an individual’s declining functional independence.

<sup>3</sup> David E. Bloom, Axel Boersch-Supan, Patrick McGee, and Atsushi Seike, *Population Aging: Facts, Challenges, and Responses* (Working Paper no. 71), Program on the Global Demography of Ageing, 2011.

## The demographics of ageing in Australia

Australia is projected to experience significant demographic change during the next 50 years. By 2050, the number of Australians aged 65 and over is projected to increase from 13 per cent of the population (2007) to a figure between 23 and 25 per cent.<sup>4</sup> Similarly, it is estimated that the number of Australians aged 85 and over will rise from 0.4 million to 1.8 million persons. This will place increased pressure on social protection, health services and care-based services; and will require a thorough assessment of work force participation and economic activity.

## Challenges facing the older population

During the fourth session of the OEWG, four key challenges facing ageing persons were addressed in two separate panels: social security and the right to health; and discrimination and access to work. This section will provide a detailed overview of these issues.

Other challenges facing older persons include:

- Elder abuse
- Right to access resources
- Right to information
- Access to the legal system
- Autonomy and independence
- Right to adequate housing
- Palliative care
- Participation and social inclusion

## Social Security

Article 22 of the Universal Declaration of Human Rights states:

*Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*

In this context, social security encompasses the provision of social welfare, social insurance and services by a state based authority. While the United Nations has developed a minimum threshold for the provision of social security, approximately 80 per cent of the world's population fails to enjoy access to social protection.<sup>5</sup> Social investment, protection and security are highly relevant to ensuring that older persons are insulated from the effects of age related poverty and are able to continue to lead productive and fulfilling lives.

The question of social security was raised in the third panel of the fourth session of the OEWG. Speakers focused on state and regional level programs that sought to improve the dispersion of social security and social investment programs. Speakers acknowledged that one of the fundamental obstacles facing the implementation of accessible social security are resource limitations, especially with regard to poorer states. Speaking as a delegate from the International Labour Organisation, Mr Alejandro Bonilla-Garcia discussed the importance of developing an inter-generational approach to social security, emphasizing that education at an early age plays a fundamental role in reducing the risk of later life poverty.

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<sup>4</sup> Australian Bureau of Statistics, Population Projections, Australia, 2006–2101

<sup>5</sup> UN System Task Team on the Post-2015 UN development agenda, Social Protection: A development priority post 2015 UN development agenda, 2012

Speakers also stressed the importance of recognizing the informal sector in developing a coherent national level social security policy. The self employed, alongside those engaged in family care and other informal activities are particularly at risk of exclusion from social security.

This has a particularly adverse impact on older persons who were formerly engaged in the informal sector, or rely on the informal sector as a means as of accessing care. Here, a substantial burden may be placed on family members of older persons who have a dual responsibility to care for older relatives and provide an income.

## Age-based Discrimination

Article 1 of the Universal Declaration of Human Rights provides that “all human beings are born free and equal in rights and dignity”. Protections against age-based discrimination within international and regional instruments are generally provided for “other status” style provisions. For example, a general prohibition of discrimination against groups based on “other status” is found in Article 26 of the International Covenant on Economic, Social and Cultural Rights:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

The fundamental issue with “other status” style provisions is that within a normative context these rights fail to take force. This leads to the broader invisibility of age based discrimination, on both social and systemic levels. For example, in its interpretation of Article 26 of the International Covenant on Civil and Political Rights the Human Rights Committee found age based discrimination was allowed on “reasonable and objective criteria”. However, the determination of what is reasonable or objective may be impacted by entrenched negative perceptions of older persons.

Discrimination against older persons is prevalent within all facets of society, however it is particularly insidious within the contexts of older persons in the workforce, older person’s access to services, social and financial exclusion, and assessments of older person’s autonomy.

Speakers at the fourth session of the open ended working group addressed the issue of discrimination against older persons in the fourth panel, entitled ‘Discrimination and Access to Work’. Speakers noted that the invisibility of age-based discrimination was a direct consequence of the failure of international and regional instruments to expressly acknowledge age as a potential genus for discrimination. A strong parallel was drawn between older persons’ experiences of discrimination and the forms of discrimination impacting disabled persons. It was cogently argued that the protections found in the Convention on the Rights of Persons with Disabilities could be adequately echoed in a similar style international instrument to protect older persons against discrimination and discriminatory practices.



## Older persons and the workforce

Older persons are vulnerable participants in the workforce as a consequence of systemic discrimination and social biases. It is reported that older persons are more likely to face redundancies and will experience significant barriers with respect to reentry into the workforce. Employers are less likely to invest in long-term training for older employees, and in national systems where social protection is employer allocated, older persons may be barred from accessing insurance, or be required to consent to a lesser insurance scheme.

In the interactive dialogue of the fourth panel of the OEWG delegates considered the challenges posed to governments with respect to adjusting and enforcing provisions that protect older workers from discrimination. In particular, states must strike a balance between ensuring that older persons have enforceable protections against exploitation or discrimination in the workforce and ensuring that these rights do not extend to a disincentive to hire older workers. Here, delegates noted that the concept of “reasonable accommodation” must be employed, whereby states are to provide incentives against non-discriminatory workplace practices.

## The Right to Health

In states where the health system is primarily privatized, older persons are far more likely to be excluded from health services. Again, resource limitations on community health services have notably disproportionate impact on older persons, who are often reliant on meager social security or limited retirement funds for their day-to-day expenses.

The issue of palliative care was raised in the third panel of the 2013 session of OEWG. It was emphasized that access to palliative care was to be characterized as a human rights issue, and its importance was recognized in the World Health Organisation Public Health Model. It was clear access to palliative care was particularly relevant to older persons, especially those facing end of life issues. It was also noted that older persons are particularly constrained in their access to palliative care, and often faced discriminatory practices when trying to access these services.

## Age in International Law

There are very few express references to the rights of older persons within international law. While soft law concerning older persons has developed over the past decade, it cannot be relied on to directly and effectively tackle the myriad of issues facing the ageing population.

International instruments are important in promoting the rights of older persons because they play an active role in norm setting, contribute to the development of policy directions, and may provide a forum where rights can be enforced.

In assessing the extent to which international law promotes and protects the rights of ageing persons, it is useful to identify the different forms of protection gaps that may exist.

Normative gaps	A normative gap exists in the absence of an enforceable legal right.
Implementation gaps	An implementation gap exists in circumstances where an existing legal provision is not enforced with respect to certain rights.
Information gaps	An information gap exists in circumstances where there is inadequate information or data on a particular matter.
Monitoring gaps	A monitoring gap exists in the absence of a functioning review system.

## International agreements concerning age

There are three international agreements relating to the rights of ageing persons. These are all non-binding.

The 1982 Vienna International Plan of Action on Ageing	The 1982 Vienna Convention was endorsed by the UN General Assembly in resolution 37/51, which reaffirmed the principles of the Universal Declaration of Human Rights and related these principles to the experiences of older persons.
The UN Principles for Older Persons (1991)	The UN Principles for Older Persons is a non-binding text that reaffirms the General Assembly's commitment to the realization of human rights for older persons. It is enshrined in resolution A46/91
The 2002 Madrid International Plan of Action on Ageing	<p>The 2002 Madrid Plan was adopted during the second World Assembly on Ageing. It gives priority to three main areas: development, health and wellbeing and enabling environments.</p> <p>The most substantial limitation of the MIPAA is that it is non-binding on the States parties to the political declaration. The MIPAA also fails to acknowledge the obligations of States parties under other instruments in international law.</p> <p>In 2010, the General Assembly adopted resolution 65/182 that recognized the limited awareness of the goals of the MIPAA, and acknowledged the lack of progress with respect to the realization of these goals.</p>

## Enforceable international instruments that reference age

On an international level, there is very limited protection for the human rights of older persons. No enforceable international instrument exists which is dedicated to the enforcement of the human rights of older persons. Similarly, there is no express mention of the human rights of older persons within the International Bill of Human Rights (the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)).

Within the nine core international human rights conventions, only three explicitly address the rights of older persons. The provisions found in the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) expressly reference age, however only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families contains an express prohibition on age-based discrimination. Hence, the opportunities for redress with respect to age based rights violations within the text of enforceable international instruments are exceedingly limited.

## Limitations of “other status” style provisions

The instruments that form the Bill of Human Rights all contain a general prohibition on discrimination, stating that the rights conferred by these instruments are applicable to all persons “without distinction of any kind, such as race, colour, sex, language, religion, political or social origin, property, birth or other status”. As age is not expressly referenced, the protection of the rights of older persons under instruments that employ “other status” or similar style provisions are subject to a number of constraints.

“Other status” style provisions offer less certainty in the protection of rights than the express provisions. States parties are able to selectively interpret “other status” style provisions and this limits the enforceability of these instruments. Similarly, the rights conferred by “other status” style provisions are often substantially constrained when affected parties seek to enforce their rights.

There is limited consistency in the application of the “other status” category to ageing persons, resulting in a lack of clarity and certainty of older persons’ rights. The Committee on Economic, Social and Cultural Rights (CESCR) found that aged based discrimination was prohibited only in certain contexts, such access to employment or education. Under the ICCPR the Human Rights Committee found that age based discrimination was allowable when based on “reasonable and objective” criteria. For example, in its interpretation of Article 26 of the ICESCR, the CESCR found that while age based discrimination did fall within the scope of the Convention, the imposition of a mandatory retirement age for airline pilots was not in violation of Article 26.<sup>6</sup>

## Consequences of the failure to effectively promote and protect the rights of older persons in existing international instruments

The failure to expressly include age as a protected demographic has resulted in the invisibility of age related issues on the international stage. Notably, it is reported that the prevalence of these ‘catch all’ style provisions with respect to older persons rights has contributed to substantial normative, implementation and information gaps regarding the rights of older persons.

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<sup>6</sup> Communication No 983/2001 Love and others v. Australia

It is evident that there is an exceptional dearth of information relating to the rights of older persons. Between 2000 and 2008, only four of 124 State reports made to the Human Rights Committee referenced the rights of older persons. In 2009 the Secretary General Report deemed States parties to treaty bodies to be “age blind”.<sup>7</sup> The failure of States parties to place due scrutiny on the experiences of ageing persons has produced significant information and monitoring gaps, which in turn furthers the effective invisibility of age related issues.

While some groups dispute whether the exclusion of age as a basis for discrimination has a resulted in a normative or implementation protection gap, the vast majority of expert led research indicates that the protection gap is primary a normative one. The failure to effectively prohibit the discrimination of older persons has led to very real consequences and the failure to enforce age-related or relevant provisions will lead to continued rights abuses and further normalize age-based discrimination.

## Development of an enforceable international instrument addressing the rights of older persons

### Scope for reform: the development of enforceable international mechanisms

The failure of current international instruments to monitor and enforce the rights of older persons has led to a widespread call for reform. The question of introducing new international mechanisms to protect older persons’ rights is increasingly relevant as the global population goes through unprecedented demographic change.

In December 2012, the UN General Assembly passed resolution 67/139 which called for:

- A thorough assessment of current international instruments during the fourth session of the OEWG; and
- Required the OEWG to present a document to the General Assembly outlining the elements of potential instrument protecting the rights of older persons.

Two major forms of international instruments have been proposed in the furtherance of the rights of older persons. An enforceable international convention on the rights of ageing persons has seen widespread support within relevant civil society and human rights organisations, alongside significant number of nation states. In addition, many groups also support the development of a Special Rapporteur or similar on the rights of ageing persons.

This section aims to detail the purpose and mandate of any viable international instrument to promote and protect the rights of ageing persons, alongside demonstrating the large amount of support for the development of such an instrument.

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<sup>7</sup> Secretary General Report, Follow-up to the Second World Assembly on Ageing, (A/64/127), July 2009

# Convention protecting the rights of ageing persons

## *Aims of an international convention*

A convention protecting the rights of ageing persons would be an enforceable international document, which may seek to:

- 1) Address and reject the notion of age based discrimination/elder discrimination;
- 2) Provide a legal framework which clearly outlines the government's obligations to its ageing populations and ensures further certainty with respect to the rights of older persons;
- 3) Develop enforceable monitoring and complaints mechanisms;
- 4) Elevate the issues relating to older persons' human rights on a national level;
- 5) Provide a guide further development of national and regional policies, through both policy recommendations and the increased dispersion of age-disaggregated data;
- 6) Encourage the reassessment of social and cultural norms which contribute to the marginalisation of older persons;
- 7) Empower older persons to be rights holders.

## *Support for an international convention*

Both the African Union and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) have vocalised support for the development of an enforceable international legal mechanism that would promote and protect the rights of older persons. In 2012, member states of ECLAC voted unanimously to adopt the San Jose Charter, which affirms the commitment of member states to the realisation of the goals of the OEWG and the development of an enforceable international instrument.

Civil society groups representing ageing persons and human rights organisation have continually called for the introduction of an international convention, in order to remedy the clear normative protection gaps which currently exist in international law.

During the fourth session of the OEWG, participating states continued to debate the nature of the current protection gaps. A number of European member states continue to argue that legal protection for the rights of older persons currently exist in international law, but are not enforced due to an implementation gap. Proponents of an international convention, who point to the lack of any advancement of the rights of older persons in existing international instruments since the commencement of the OEWG and the development of the MIPAA, broadly contest this notion. Expert led research largely concludes that the protection gaps relating to the rights of older persons is a normative one.

## *Potential framework: Convention on the Rights of Persons with Disabilities*

There has been limited discussion during the proceedings of the OEWG regarding the elements of a potential framework. It is important that participating civil society groups and states commence a comprehensive dialogue on the form of a possible convention.

Due to the similarities in the type of challenges facing persons with disabilities and ageing individuals, many civil society organisations have pointed towards the CRPD as a potential framework for an international convention addressing the rights of ageing persons.



Ms Eilíonóir Flynn, contributor to the fifth panel during the proceedings of OEWG, pointed to the parallels between the normative situations of both groups. Like ageing persons, prior to the introduction of the CRPD protection against discrimination based on a disability was found primarily in “other status” provisions. Ms Flynn stated that effective recognition of rights required an express provision and that “other status” provisions were widely inadequate.

Aspects of the CRPD that may be applied in the context of ageing persons include:

- A broad definition of ageing, in order to prevent the exclusion of some individuals and to take into account the social construction of age;
- Emphasis on universal design, in order to ensure that services, environments, programs and products are equally accessible to ageing persons;
- An express prohibition on age-based discrimination.

## A special rapporteur on ageing

A special rapporteur on ageing would report to the Human Rights Council on the matter of older persons’ human rights. The responsibilities of a special rapporteur would include examining and monitoring rights violations of older persons, providing advice to member states regarding the rights of older persons within their societies, and reporting to the Human Rights Council.

A special rapporteur would increase the visibility of the human rights of older persons, alongside recommending new mechanisms for international, regional and national bodies that could assist in rights protection and identifying current gaps in the legal systems.

As of September 2013, the United Nations Human Rights Council has created a new position for an independent expert on the human rights of ageing persons. The position of independent expert will initially exist for three years, and the independent expert will work with the OEWG and other international bodies to promote and protect the rights of ageing persons.

## Regional approaches to ageing

### Regionalism and the realisation of the human rights of ageing persons

A significant amount of work towards the implementation of the goals of the Madrid International Plan of Action on Ageing (MIPAA) has been executed through regional blocs and organisations. A substantial component of the fourth session of the Open Ended Working Group was to allow regional actors a space to collaborate and report on the status of the realisation of the goals of the MIPAA within their respective regions.

### Africa

In 2012, the African Union Conference of Ministers for Social Development (CAMSD) supported the development of the Draft Protocol to the African Charter on the Rights of Older Persons in Africa. Under the Draft Protocol, the African Union will encourage States Parties to enact legislation and other measures that would allow for the protection of a range of older person’s rights, including the right to access housing, health and basic social services. This would echo the current African Union Policy Framework and Plan of Action on Ageing that requires States Parties to both recognise the rights of older persons and “abolish” all forms of age-based discrimination.

A report released by the Working Group on the Rights of Older Persons and People with Disabilities in Africa reported that the greatest challenges facing Africa's realisation of the goals of MIPAA were the dearth of data available on ageing persons, resource constraints, accessibility of health care and social services, access to housing and institutional capacity. Gender was also identified as a substantial issue, as older women faced a greater likelihood of social and economic marginalisation.

My Yeung Sik Yuen, Commissioner of the African Commission on Human and People's Rights and a panellist at the fourth session of the OEWG, was optimistic about the implementation of the Protocol, highlighting that by adopting a holistic approach the Protocol would encompass the diverse contexts of States Parties.

## American states

In 2011 the issue of human rights and ageing persons was addressed at a meeting of the Organisation of American States (OAS), where it was decided that member states should adopt uniform enforceable protections regarding the rights of older persons. The Working Group on Protection of the Human Rights of Older Persons was subsequently established, and the past two years have seen the development of a Draft Inter-American Convention on the human rights of older persons.

Ms Ana Pastorino, speaker on the second panel of the fourth OEWG session, noted that the formal negotiations on the development of the draft were in their final stages and the vast bulk of the text had achieved consensus.

During the third meeting of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC/CEPAL) in 2012, member states adopted the San Jose Charter. Under the charter, member states reaffirm their commitment to the goals and objectives of the OEWG, including the realisation of legally enforceable mechanisms to promote and protect the human rights of ageing persons on an international level.

Both panellists who spoke on the American states' progress towards the realisation of the goals and objectives of the MIPAA and the OEWG identified a number of challenges, including institutional capacity, accessibility and the adequacy of existing health care and social security mechanisms.

## Asia Pacific

Thirty member states of the Economic and Social Commission for Asia and the Pacific (UNESCAP) were in attendance at the second review and appraisal of the goals and objectives of the MIPAA. During the appraisal member states identified resource constraints as the greatest challenge facing the realisation of the goals of the MIPAA.

The Asia Pacific region has arguably the greatest need to address issues relevant to older persons: 60 per cent of the world's ageing population reside in the region, and this proportion is projected to increase substantially in the next thirty years. There has been no organised multilateral approach to the issue of ageing in the Asia Pacific, and no indication of any development of an enforceable regional instrument that would aim to protect the rights of its ageing persons.

Ms Changtrakul, First Secretary at the Permanent Mission of Thailand to the United Nations and speaker on the first panel of the fourth OEWG session, identified a number of challenges which hindered the region's capacity to fully realise the goals of the MIPAA, including:

- Lack of resources;
- Failure to mainstream gender issues;
- Absence of instruments which effectively address elder abuse;
- Accessibility and availability of health care programs; and
- Accessibility and availability of social protection.

The need for affordable and accessible health care is further illustrated by the fact that it is projected that the number of dementia patients in the region will rise from 14 million persons in 2005 to 65 million in 2050.

Gender will be an increasingly relevant policy consideration for states within the Asia Pacific region. It is estimated that by 2050, 65 per cent of the region's ageing population will be women. Given that rights of women in the Asia Pacific region still require substantial advancement, it is imperative that Asia Pacific states are acutely aware of gendered issues when developing age specific policy frameworks.

The social security system in the Asia Pacific region is largely underdeveloped. Excluding the highly developed economies such as Australia, Japan and New Zealand, even states with existing social security policies are often unable to provide sufficient coverage. For example, Thailand offers ageing persons the equivalent of 15 USD per month in social protection, which equates to a mere third of the minimum wage. The predominance of the informal sector within the region also provides for a further challenge for the development of comprehensive national social security policies. A large number of developed economies tie their social security system to participation in the formalised workforce: such a policy would be highly impractical to adopt, and would leave many ageing persons vulnerable.

## Europe

By 2025 ageing persons will constitute approximately 20 per cent of the population of Europe, with this number projected to increase to 25 per cent by 2060. This substantive increase in the population of older persons will require Europe to develop comprehensive and effective age related policies in order to insulate the European economy from a decline in labour force participation and the increase of persons reliant on social protection.

Despite these challenges, Europe has seen the development of a human rights protection framework that addresses age related issues. An enforceable mechanism protecting the human rights of ageing persons is found in the European Convention on Human Rights. Although ageing persons are not expressly referenced in the Convention, older persons have successfully sought protection under related provisions in the European Court of Human Rights. The revised European Charter also includes an express reference to the right of older persons to social protection.

In the second panel of the fourth session of the OEWG, Mr Cangemi addressed the relevance and efficacy of soft law provisions in Europe. Mr Cangemi argued that soft law mechanisms, such as the recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly, actively promote the human rights of older persons as these mechanisms have the support of the 47 Council of Europe member states.

Outcomes of the second appraisal of the Madrid International Plan of Action on Ageing were discussed in the first panel of the fourth OEWG session. Member states adopted the Vienna Declaration of 2012, which acknowledged the importance of mainstreaming age related policies. Policy areas that were identified in the second appraisals as requiring further reform included the facilitation of greater participation of older persons in the workforce, accessible and adequate health policies, and promoting intergenerational solidarity.

## Australia and regionalism

The ageing population will be the greatest demographic challenge facing the Asia Pacific region within the next fifty years. It is imperative that coherent international and regional mechanisms addressing the rights of ageing persons are developed in order to facilitate the introduction of strong and effective public policies on a national level. It lies within Australia's interests to play an active role in the development of a regional body that seeks to address and promote the rights of ageing persons in the Asia Pacific.

The promotion of the rights of ageing persons within the Asia Pacific would seek to further advance Australia's strategic interests within a geopolitical context. Prime Minister Tony Abbott has keenly emphasised that Australia needs to reorient its foreign policy objectives towards Asia, stressing that there needs to be "more Indonesia, less Geneva" within Australia's diplomatic agenda. This is consistent with ongoing developments in Australian foreign policy under the leadership of both Kevin Rudd and Julia Gillard, and this is demonstrated in the 2009 and 2012 White Papers. While Australia continues to promote the development of social and legal rights within the Asia Pacific, leadership on a universally beneficial issue such as the rights of ageing persons would further serve to develop Australia's leadership role within the region.

Seeking multilateral regional action that promotes and protects the rights of ageing persons in the Asia Pacific will add continuing influence to Australia's role in international governance. Australia currently holds a seat on the 2013 – 2014 UN Security Council, and has emphasised its priority as "making a difference for small and medium sized countries". By seeking a leadership role in advocating rights of older persons, Australia also will further consolidate its ties with the influential Latin American voting bloc, which has vocally supported the ageing agenda.

Australia has demonstrated that it holds a strong commitment to the welfare of its ageing population, and has successfully implemented a number of economic, social and legal policies to promote the role of ageing persons within our society. During the government led by former Prime Minister Julia Gillard, Australia has shown global leadership by being the first nation state to introduce the position of the Age Discrimination Commissioner, a role that is occupied by the Hon Susan Ryan. Likewise, the introduction of the age care reform package entitled Living Longer, Living Better in April 2012 has seen the development of an excellent ten year plan to improve the availability, accessibility and adequacy of aged care services within Australia.

Promotion of international action on ageing will also create domestic political momentum around the issues facing our own ageing population, such as gaps in protection against elder abuse and social protection reform. Exhibiting leadership with respect to the rights of ageing persons on a national, regional and international scale will also seek to reaffirm Australia's commitment to human rights principles, following the ongoing criticism of Australia's treatment of refugees by international human rights bodies.

Finally, a strong moral imperative exists in support of Australia adopting a leadership role concerning the rights of ageing persons: the promotion of human rights norms should not stop at Australia's national boundaries. Support and advocacy for an international convention would benefit both older persons in Australia and those beyond our borders. Australia has a real opportunity to enhance the well-being of older persons – nationally, regionally and globally.

Consequently, it lies firmly in Australia's national interests to advocate for:

- The development of a binding international instrument (convention) which seeks to protect and promote the human rights of ageing persons, which includes both a monitoring system and a complaints mechanism;
- The formation of a regional bloc in the Asia Pacific to advocate for the development of such an instrument;
- The formation of a multilateral regional body or mechanism which seeks to protect and promote human rights within the Asia Pacific region;
- To support the continuation of the process to appoint a Special Rapporteur or similar to promote and protect the rights of ageing persons.



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