

Progress and challenges for the protection of the Rights of Older Persons An international perspective based on the Open-Ended Working Group on Ageing

This presentation will focus mainly on the discussions and conclusions from the Open-Ended Working Group on Ageing, held in New York on April and August 2011. But I will first recall briefly the linkages between the World Assemblies on Ageing and the human rights framework.

1. The rights of older persons': from Vienna to Madrid

In 1982, the First World Assembly on Ageing was held in Vienna.

The Vienna Plan focused on policies in developed countries that tended toward a welfare orientation. At that time, an ageing population was already apparent in developed countries, while the issue remained on the distant horizon in most developing countries. The Vienna Plan of action reflected that demographic situation and the approach to social policy at that time. The main issues were employment and income security, health, housing, education and social welfare.

Over the twenty years that elapsed between the adoption of the Vienna Plan in 1982 and the Madrid International Plan of Action on Ageing in 2002, many things changed which have contributed to major change toward the protection of the rights of older persons at the international level:

- the ageing of populations had become much more apparent in developing countries;
- the development policy framework included a more participatory approach;
- in 1991 there was the adoption by the General Assembly of the United Nations Principles for Older Persons, which was a rights based document promoting the rights of older persons, although not a binding document. Those UN Principles focused on five clusters: (1) independence; (2) participation; (3) care; (4) self- fulfillment; and (5) dignity;
- in 1995, there was the world summit on social development, promoting the concept of a society for all ages;
- and in 1999, the international year of older persons also highlighted the importance of a society for all ages.

All those factors influenced the preparation of the Second Assembly on Ageing and the Madrid Plan of Action, which presented a major shift compared to the Vienna Plan of Action. It reflects the modern perspectives on ageing and older persons, which:

- views them as agents of change rather than passive agents;
- recognizes them as contributors to, not just recipients of, economic and social development;
- and emphasizes their rights aspect, which is to say, their fundamental human rights to equal treatment and self-determination.

In other words, the conceptual approach of the MIPAA is in line with the human rights principles. Governments clearly reaffirmed that the promotion and protection of all human rights and fundamental freedoms, including the right to development, are

essential for creating an inclusive *society for all ages*, and therefore to ensure that persons are able to with security and dignity and to continue to participate in their societies as citizens with full rights.

2. The creation of the Open-Ended Working Group

Whereas the first review and appraisal of the Madrid Plan of Action highlighted some successes, it also revealed a variety of common obstacles in the implementation of the Madrid Plan of Action.

Among different challenges, (1) there is a major issue of exclusion from full participation in political, social and cultural areas of societal life, (2) and an issue of lack of empowerment for older persons to claim their rights as citizens.

In sum, it was possible to observe after the first review and appraisal of the Madrid Plan of Action that older persons – due to age discrimination and their physical and emotional vulnerability that can accompany ageing - in many countries continued to experience assaults on their rights.

In December 2010, (at the 65th GA session) Member States decided to establish an Open-Ended Working Group, open to all States Members of the United Nations, for the purpose of strengthening the protection of the human rights of older persons by considering the existing international framework of the human rights of older persons identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.

3. Major challenges faced by older persons discussed during the OEWG:

The main conclusions and observations presented here are based on the outcome of those two sessions:

- a first session in April 2011
- and a second session in August 2011.

In general, there was consensus of the particular nature of some human rights challenges faced by older persons that have thus far not been adequately addressed.

Among them:

- **Age discrimination** was identified as one of the most frequent challenges faced by older persons around the world, as it impairs or nullifies the exercise of human rights in any field.

In fact, only two international treaties clearly specify age as a prohibited ground for discrimination: the ICMW (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)) and the CRPD (Convention on the Rights of Persons with Disabilities (2006)).

Multiple discrimination – as a combination of different grounds of discrimination - was also discussed, as older persons are more prone to endure multiple discrimination than the majority of the population. This is in particular the case for older women.

In the context of age discrimination, the positive obligations of States were discussed, especially in the area of social policies and services, to address structural discrimination.

- **Ageism and prejudice** was also recognized as impacting various human rights, including the fact that it aggravates discrimination of older persons.

- **Violence and abuse** against older persons was also a key issue, revealing that those situations are more often systematic than isolated stories.

Major challenges in this area are the fact that it is under-reported and unrecorded, and its peculiarities not always understood.

There is also insufficient legislation or mechanisms to prevent, to investigate it and to offer adequate remedies.

- **The right to the highest attainable standard of physical and mental health** of older persons is at core of human rights concerns.

Areas of concern include denial of access to diagnosis, treatment and care.

Some delegations referred to existing international instruments protecting the right to health of older persons, while other noted that existing instruments do not provide sufficient specificity about quality, accessibility and long-term care.

For instance, although Alzheimer Disease and Related Dementias can be early diagnosed and measures can be taken, only seven countries have published a national plan on ADRD. This example and many others illustrate the little awareness and adequate training of health professionals, who consider Alzheimer a normal part of ageing, aggravating the vulnerability of older persons to discrimination, abuse and isolation.

- **Access to justice**, so well exemplified earlier in several presentations, was another major challenge discussed. It was observed that there is also the need to create measures to support the exercise of legal capacity by older persons related for instance to health treatment, property and inheritance.

- **The right to social protection** was also a good example of the existence of international treaties that apply to all members of society, but in practice do not guarantee the adequate protection that older persons deserve. This example was emphasized by many delegations to justify the establishment of a specific standard directly aiming at the protection of the right to social security by older persons.

4. Identification of existing gaps

Considering all the issues discussed, various gaps in the protection of the human rights of older persons were identified.

- (1) normative gaps,
- (2) implementation gaps,
- (3) monitoring gaps, and
- (4) information gaps.

And those gaps are both evident at national and international level.
Here, I will focus on the international dimension.

At the international level,

- some delegations noted that the existing international standards are sufficient, but have been under-utilized. There are no normative gaps, but rather implementation gaps of existing instruments to the particularities of older persons.

In this perspective, existing treaty bodies monitoring mechanisms and special procedure mandate holders should be encouraged to incorporate more systematically the situation of older persons in their areas of work.

Also, member states should include the situation of older persons in their reports to the Universal Periodic Review in the Human Rights Council, and take those opportunities for monitoring their situation.

- In the other hand, other delegations argued that existing international instruments, while sometimes applicable to older persons, have not offered adequate protection, visibility and specificity to older persons. Several provisions in human rights treaties apply to older persons as they are universal, but there is no specific instrument devoted to this segment of the population and few existing references to age.

- Also, many experts and delegations pointed out that the protection regime at international level appears too fragmented to cover the specificity of older persons' rights; there are unique barriers and specific challenges faced by older persons which deserve dedicated attention. There are specific normative gaps that deserve universal standards. The existing system also does not provide a systematic approach, and a clear channel for monitoring.

5. Options for strengthening the protection of the human rights of older persons:

In line with the different perspectives on the gaps identified, several suggestions have been offered with the aim of strengthening the international human rights protection system for older persons, of which some could be implemented in parallel:

Suggestion 1

- Elaboration of a binding international human rights instrument, such as a Convention,
- that would clarify States responsibility towards older persons
- and improve accountability;
- It would provide a framework for policy and decision making,
- and offer one monitoring mechanism with dedicated focus.

Suggestion 2

- Establishment of a new mandate-holder (independent expert or Special Rapporteur with a human rights mandate;
- This option could contribute to the monitoring gap concerning the rights of older persons,
- Would raise awareness;
- A rapporteur or independent expert could study and report on the situation of older persons and make recommendations on how best to address the issue, including the option of developing a new instrument.

Suggestion 3

- Other Member States argued in favour of stronger use of core international human rights instruments by existing treaty bodies and special procedure mandate holders;
- The defenders of this option consider that current human rights treaty bodies could investigate more systematically rights-related issues specifically for older persons in the Universal Periodic Review.

Suggestion 4

- There should be more emphasis on governance, policies and coordination, to tackle older persons' issues, including a more effective implementation and monitoring of the MIPAA at the regional level.

In addition to those perspectives and suggestions, several delegations have mentioned:

- The outcome of the second review and appraisal of the MIPAA would be useful before considering further instruments and mechanisms to address human rights.
- Commission studies, further information and data analysis, development of indicators and monitoring mechanisms, should also be addressed to strengthen the implementation at national and international level of existing instruments.
- Some delegations preferred to call for regional approaches to design appropriate mechanisms for older persons, instead of universal standards and monitoring mechanisms.