

**Report of the
Expert Group Meeting
“Rights of Older Persons”**

Convened in preparation for the report of the Secretary-General to the 64th session of the
General Assembly

5-7 May 2009, Bonn, Germany

1. Purpose of the meeting

The Division for Social Policy and Development (DSPD) of the United Nations Department of Economic and Social Affairs (DESA) organized an Expert Group Meeting on “Rights of Older Persons” on 5-7 May 2009, in Bonn, Germany. The meeting was convened in response to resolution A/RES/63/151 adopted by the Third Committee of the General Assembly at its sixty-third session, wherein the General Assembly requested the Secretary-General “to submit to the General Assembly, at its sixty-fourth session, a report on the implementation of the present resolution, including information on the promotion and protection of human rights as they pertain to older persons.”¹ The purpose of this Expert Group Meeting was to provide the General Assembly with independent expert opinion on questions related to the rights of older persons, as well as inputs into and recommendations for the report of the Secretary-General.

The participants and observers of the meeting were: Ferdous Ara Begum (Member of the UN CEDAW Committee and Gender Issues Specialist, Bangladesh), Lia Daichman (President of the International Network for the Prevention of Elder Abuse, Argentina), Carola Donner-Reichle (Director, Social Development, InWent, Germany), Israel (Issi) Doron (Department of Gerontology and School of Social Work, Israel), Gabriele Freitag (Stiftung “Erinnerung, Verantwortung und Zukunft”, Germany), Irene Hoskins (President, International Federation on Ageing, USA), Lindsay Judge (Expert on Rights of Older Persons, United Kingdom), Alexandre Kalache (Senior Policy Advisor on Global Ageing, New York Academy of Medicine, Brazil), Jody Kollapan (South African Human Rights Commission, South Africa), Laura Machado (International Association of Gerontology and Geriatrics, Brazil), Tracey McDonald (RSL LifeCare Chair of Ageing, Australian Catholic University, Australia), Matthias Meissner (Projectmanager, Social Protection Section, Deutsche Gesellschaft fuer Technische Zusammenarbeit, Germany), Kate Mewhinney (Clinical Law Professor, Wake Forest University, USA), Susanne Paul

¹ A/RES/63/151, paragraph 19

(President Global Action on Aging, USA), Bridget Sleaf (Rights Policy Adviser, HelpAge International, United Kingdom), Silvia Stefanoni (Director of Programmes – Deputy CEO HelpAge International, United Kingdom), Marita Steinke (Bundesministerium fuer wirtschaftliche Zusammenarbeit und Entwicklung, Germany).

2. Background and justification

Due to declines in fertility and rising longevity, the world is ageing at an ever-increasing pace. In the more developed regions, the population aged 60 and over is expected to increase by more than 50 per cent over the next four decades, rising from 264 million in 2009 to 416 million in 2050. The population of the less developed regions is ageing rapidly, too. Over the next four decades, the population aged 60 and over in the developing world is projected to triple from 473 million in 2009 to 1.6 billion in 2050. The older population itself is ageing at an accelerated rate with the population aged 80 and over projected to increase four-fold, to reach 395 million in 2050.² Older women also continue to outnumber older men, as they account for 54 per cent of all persons aged 60 years and over and 63 per cent of those aged 80 years and over, worldwide.

The Second World Assembly on Ageing, which took place in Madrid, Spain, in April 2002, adopted the Madrid International Plan of Action on Ageing, “to respond to the opportunities and challenges of population ageing in the twenty-first century and to promote the development of a society for all ages”³. A major theme of the Madrid Plan is devoted to the important issue of rights of older persons: “The promotion and protection of all human rights and fundamental freedoms, including the right to development, is essential for the creation of an inclusive society for all ages in which older persons participate fully and without discrimination and on the basis of equality. Combating discrimination based on age and promoting the dignity of older persons is fundamental to ensuring the respect that older persons deserve. Promotion and protection of all human rights and fundamental freedoms is important in order to achieve a society for all ages.”⁴ To attain these goals, one of the suggested actions in the Plan of Action is to “ensure the full enjoyment of all human rights and fundamental freedoms by promoting the implementation of human rights conventions and other human rights instruments, particularly in combating all forms of discrimination.”⁵ Another important document besides the Madrid Plan that specifically focuses on the rights of older persons is the United Nations Principles for Older Persons. The UN Principles address the independence, participation, care, self-fulfillment and dignity of older persons and consist of eighteen different suggestions covering these five topics.⁶

Various regional implementation documents⁷ that ensued after the Second World Assembly reaffirmed its objectives and actions specifically targeting the situation of older

² UNDESA, World Population Prospects - The 2008 Revision (Highlights), 2009

³ Political Declaration of the Second World Assembly on Ageing, 2002, article 1.

⁴ *Report of the Second World Assembly on Ageing, Madrid, 8-12 April 2002* (United Nations publication, Sales No. 02.IV.4), paragraph 13

⁵ *Ibid*, paragraph 21. a)

⁶ See: http://www.un.org/esa/socdev/ageing/un_principles.html

⁷ http://www.un.org/esa/socdev/ageing/impl_map.html

persons in the respective five regions of the United Nations. During the first review and appraisal of the Madrid International Plan of Action on Ageing in 2007-2008, five regional review conferences were held. The Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean agreed on the Brasilia Declaration, which pledged to “to make the necessary consultations with our Governments to promote the drafting of a convention on the rights of older persons within the framework of the United Nations.”⁸ This pledge is the most explicit regarding a possible convention on the rights of older persons in the recent past.

Ageism, discrimination, abuse and violence against older persons represent some of the major existing infringements of their rights. The important topic of abuse of older persons was addressed in preparation of the Second World Assembly in a report of the Secretary-General. The report surveyed issues related to abuse of older persons from a global perspective based on studies conducted between 1982 and 2002. The report presented definitions and typologies within the context of social, economic and cultural diversity, introduced intervention and prevention responses, attempted to estimate the impact, consequences and costs of the abuse of older persons, and suggested policy responses. It covered the important issues surrounding the highly sensitive topic of abuse of older persons for the first time in UN history.⁹

The Expert Group Meeting on Rights of Older Persons was the first of its kind organized by the United Nations to discuss the state of rights specifically geared towards older persons. It has taken into account important previous documents and conferences when it addressed the issue of rights of older persons.

3. Objectives

The overall objectives of the Expert Group Meeting were to explore how fundamental human rights of older persons could be assured and deepened and how the Madrid Plan of Action on Ageing could be better implemented concerning the rights of older persons. In this context, analysis, approaches and documents of rights enforced in the past, of institutional settings, and of overall capacity to further implement policies and laws concerning the rights of older persons were discussed during the meeting.

Specific objectives of the meeting were:

1. Identify and evaluate good national practices regarding protecting and promoting the rights of older persons, including measures to prevent discrimination, neglect, abuse and violence;
2. Select innovative approaches to widening and deepening the rights of older persons nationally and internationally;

⁸ http://www.un.org/esa/socdev/ageing/documents/regional_review/Declaracion_Brasilia.pdf, paragraph 26

⁹ See also “A Global Response to Elder Abuse and Neglect: Building Primary Health Care Capacity to Deal with the Problem Worldwide: Main Report”, World Health Organization, 2008, and “Missing Voices: Views of older persons on elder abuse”, WHO, 2002.

3. Identify capacity tools that are required and could be recommended to policy makers when addressing the rights of older persons;
4. Elaborate recommendations on how to promote the rights of older persons at the level of member states and the United Nations;
5. Explore feasibility and possible approaches to elaborating an international legal framework on the rights of older persons, including (a) an international convention on the rights of older persons, or (b) a special rapporteur on the rights of older persons.

4. Summary of proceedings

Session I: Existing infringements of rights of older persons: ageism, abuse, neglect and violence against older persons

The participants discussed at length existing infringements, their root causes and possible remedies. The rights of older persons may be violated in a number of ways, both on the individual level as well as on the institutional level. Violation of rights often manifests itself in the form of discrimination. For example, older persons are frequently subject to discrimination in the area of health care, either being denied access to services or receiving sub-standard or insufficient care on account of their age. In the workplace, older persons may be denied promotional opportunities, or not given an equal chance during the hiring process.

Too often, older workers are viewed in an unappealing light by employers. Negative stereotypes abound: older workers are assumed to be inflexible; lack initiative; tend to take more sick leave; have a poor grasp of foreign languages; are reluctant to take part in training; have a limited ability to adapt to new working conditions; and lack knowledge of new technologies or production processes. In most cases, these stereotypes are far from the truth. Hence efforts are being made to combat these negative perceptions and encourage employers to hire older workers, especially in countries where older persons have a “voice”.

Since older women often encounter difficulties in securing a job due to biases from employers, it is perhaps not surprising to see that in all regions of the world except Oceania, women aged 55 to 64 are the most inactive group of people of working age. Overall, their labour force participation rates average 38.7 per cent, which is well below the 66.7 per cent average labour force participation rate for women of prime working age (25-54), and even considerably lower than that for young women aged 15-24, at 45.9 per cent. The fact that many countries still have lower retirement ages for women than for men, regardless of the fact that female life expectancy eclipses that of male life expectancy by several years, also helps to explain the high labour force drop out rate for older women workers. Nevertheless, many women continue to work and remain actively engaged as they age, but in the somewhat hidden and underappreciated job of unpaid family caregiving.

Older persons, especially older women and those residing in rural areas of developing countries, are more likely to be illiterate than other parts of the population. Oftentimes they were not able to go to school when they were younger, owing to such things as economic or cultural barriers. In Western Asia, for example, the illiteracy rate is high among older women because they were not exposed to educational opportunities at a time when tradition was more in control of their lives, leading to their seclusion, hence denying them the right to education.

Among the root causes of infringements is that older persons are frequently negatively stereotyped on the basis of their age and discriminated against. This systematic stereotyping and discrimination against people because they have reached a certain chronological point and are considered “old” has come to be known as “ageism”. There is no single cause of ageism and while the term applies particularly to older people it can be thought of more broadly. Essentially ageism is a set of beliefs according to which the value and ability of individuals is judged based on their chronological age. These value frameworks can sometimes be supported more generally resulting in systemic limits to opportunities for people in certain age groups.

The experts deliberated on the causes of ageism and expressed numerous opinions, such as that ageism reinforces a negative image of older persons as dependent people with declines in intellect, cognitive and physical performance, and other areas required for autonomous, daily functioning. As a result, older persons are often perceived as a burden, a drain on resources, and persons in need of care. These perceptions contribute to their vulnerability and exacerbate it putting their rights at risk. Other factors which contribute to older persons’ vulnerability are that they are more likely than younger adults to be illiterate, poor, and have trouble accessing information about their rights. In addition, the erosion of bonds between generations of families, and the increasing likelihood that younger persons will migrate to other areas leaving their older parents alone, also adds to their vulnerability.

Apart from ageism, elder abuse is a serious threat for many persons in later life, which takes many forms. Since first identified more than 30 years ago as a social problem, elder abuse, like other forms of family or interpersonal violence, has become recognized as a universal phenomenon that cuts across cultural and socioeconomic lines. The mistreatment of older people is a complex issue with moral, socio-cultural, political, and personal ramifications that often crosses health care, legal, human rights, and ethical domains within society’s major institutions. The level of research as well as public and professional understanding about the issue still lags behind other types of interpersonal or family violence.

Over the years, there have been many efforts made to define more precisely what constitutes elder abuse and neglect. There is no standardized definition and this reflects the challenges in achieving a consensus on the scope of harm to be included in, or excluded from that definition. There is also a question whether a definition of elder abuse should focus on a specific age or other characteristics presumed to facilitate vulnerability in old age. Despite these difficulties, a number of emerging definitions have been gaining

growing acceptance. The following definition is now in common use in many parts of the world: elder abuse is “a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”. (WHO World Report on Violence and Health, 2002: 126)

Abuse and neglect exist in a continuum of harm ranging from less to more severe actions or inactions. The impact of abuse on the individual as well as on the family and the community may be affected by elements such as the frequency, duration, intensity, severity, and consequences of the actions. Living with abuse or neglect in later life is stressful and can have significant negative health effects on older adults’ lives, including increased mortality rates relative to non-abused older persons. Abuse and neglect of older persons is also recognized for its intergenerational effect.

Abuse of older adults may be generally divided into the following categories: (a) physical abuse: the infliction of physical harm or injury, physical coercion, or physical restraint (assault) to an older person; (b) psychological abuse: the infliction of mental anguish (verbal, emotional abuse) to an older person; (c) financial or material abuse: the illegal or improper use of funds or resources from an older person. (e.g., financial exploitation, theft); and (d) sexual abuse: sexual contact with the older person without their consent (e.g., sexual molestation, rape).

Experts agreed that elder abuse is a complex problem that combines elements of family arrangements, carer issues and socio-cultural issues.

- Family arrangements can include family disharmony created by the older person’s presence, a history and pattern of verbal and physical violence within the family, social isolation, carer anxiety and stress as well as lack of knowledge of care giving skills.
- Carer issues including personal problems of the carer can lead to a frail older person being abused. Carers with mental or emotional illness, addiction to alcohol or other drugs, job loss or other personal crises can trigger abuse.
- Where financial dependency on the older person exists, family members and care givers can act out against the older person especially if they have a tendency to use violence to solve problems.
- Societal attitudes can support abusers to continue without detection or intervention. Where society has an attitude that devalues and lacks respect for older people, elder abuse can be dismissed as a private, family matter that does not warrant investigation or intervention. Abused people often feel shame and embarrassment, making it difficult for them to reveal abuse to others, even to other family members.
- Lack of respect for older persons can promote an environment of violence against them. When older people are resented, hated or regarded as redundant, the importance of assuring dignified, supportive, and non-abusive life circumstances for every older person is made more difficult.

- Paid caregivers can be drawn from groups who themselves are at some disadvantage within a society can also become abusers of those for whom they care. Language difficulty, history of civil unrest, distance and isolation from their own families and sometimes not having legal status within the society creates a situation where they have no social security protection themselves and are more willing to accept low pay for care work for which they invariably have little or no training.

The prevalence of abuse perpetrated by family members justifies deeper analysis of what may be contributing to caregivers' risk factors for elder abuse. These include: (a) inability to cope with stress (lack of resilience); (b) depression, which is common among caregivers; (c) lack of support from other potential caregivers; (d) the caregiver's perception that taking care of older persons is burdensome and without psychological reward; and (e) substance abuse.

Neglect of older adults is often a precursor to abuse; it refers to certain failures to live up to social or legal responsibilities to provide care, support, or assistance to an older adult. Elder neglect may be subdivided into active and passive forms: (a) active neglect, where the other person refuses or fails to uphold an expected or legal caregiving obligation, such as providing food, medication, or shelter. Active neglect includes conscious and intentional attempts to inflict physical or emotional distress on an older person and (b) passive neglect, failure to fulfill a caregiving obligation out of lack of awareness or knowledge of the older person's needs and condition (which might occur where aging spouses are caring for each other or adult children do not understand the extent of an ageing parent's frail condition).¹⁰

Deliberating on policy responses to abuse and neglect of older persons, the experts agreed that they have been insufficient until now. Despite most research indicating that older persons are more likely to experience abuse within the community and from their own families, legislative attention is often focused on preventing abuse of older people in long-term care settings where care service providers are subjected to greater scrutiny by government, workers, family and friends than occurs within the community. This dimension is important, but it is not sufficient.

Where suspected residential care abuse is reported, certain protocols are enacted involving the police, government departments and the service provider. For similar legislation to apply to non-institutional settings the issues of detection and intervention would require appropriate approaches and community-based resources that would support a similar level of scrutiny to that now in place for long-term care of older persons. For an equivalent system to exist in community contexts, greater responsibility would have to be placed on the professionals and services operating in people's homes, to report suspected abuse and discrimination. In such an event, there would need to be a well-resourced investigative body to follow-up on such reports and also a network of response options available.

¹⁰ For definitions, see Daichman L S, Aguas S and Spencer C Elder Abuse. In: Kris Heggenhougen and Stella Quah, editors International Encyclopedia of Public Health, Vol 2. San Diego: Academic Press; 2008. pp. 310-315.

Raising awareness and understanding of elder abuse within communities, countries, and internationally has experienced a boost: June 15, 2006 marked the debut of World Elder Abuse Awareness Day, which communities and agencies in many countries have used as an opportunity to heighten awareness and support for abuse prevention, help enable development of awareness into action, mobilize efforts, and galvanize community and policy action. Prevention events may be planned for the day, as well as weeks and the month around it. The activities may focus directly on abuse prevention and awareness to build public and professional awareness, or public awareness campaigns may concentrate on the underlying factors, such as ageism or diminished respect. The INPEA (International Network for the Prevention on Elder Abuse) network initiated a number of forward-looking measures in this regard.

Specific Recommendations:

Considering recommendations, the experts agreed that governments should be encouraged: (1) to combat ageism and stereotyping of older people through policy processes and public statements; (2) to enhance awareness and data collection regarding discrimination and abuses against older persons and reporting such abuses should be eased so as to encourage self-reporting by victims of infringements; (3) to initiate a nation-wide review about the problems of neglect, abuse and violence against older persons in order to come up with more effective prevention strategies, as well as more effective laws and policies to address the problem and its underlying factors; (4) to foster a comprehensive approach to prevention of violence and abuse, focusing on the underlying contributors as well as the policies and infrastructure that support mistreatment, or contribute to it; and (5) to initiate research and prevention programmes, advocacy and information for older adults about their rights and ways to access services.

Session II: Current status of rights of older persons on the national level

Taking stock of the existing situation pertinent to the rights of older persons at the national level, the experts agreed that legal needs of older persons are often complex and can cross over many legal areas. Access by older persons to legal rights can be further complicated by diminished mental capacity, intimidation from abusers and medical problems. The areas of law which cover entitlements, rights and issues of concern to older persons, their families and carers can include all areas of law and policy where the potential exists for abuse and discrimination against older people and others: (a) age discrimination; (b) guardianship; (c) social security, pensions and superannuation; (d) wills and powers of attorney; (e) employment and retirement; (f) housing (including retirement villages and aged care homes); (g) elder abuse; (h) healthcare and long-term care (both institutional and community-based); (i) consumer rights; (j) estate and financial planning; and (k) family law (including family care agreements and custody of grandchildren).

Experts reported on policies that promote or impede the rights of older persons. The policies listed below are by no means exhaustive and focus on the countries experts are most familiar with.

In the United States of America, insurance coverage is adequate for health and hospital care and other aspects of older persons' needs and rights on many aspects of daily life. However, health care policy does not address at-home care and gives little support for long-term care. Care-givers often have limited leave from their employers to provide care to older persons. This places an unfair burden on women for many aged care services. Income security in the United States has changed due to the widespread adoption of defined contribution plans, which have introduced great uncertainty to employment related pensions. The social security system does not cover the care-giver role. More developed countries, such as the United States can afford social protection for 87 million older persons, including health care in hospitals, social security income support, bars against employment discrimination, home delivery of food, appointment of surrogates, etc. The Older Americans Act helped to make these programmes possible. However, despite far-reaching programmes, many older persons lack these protections, e.g. immigrants, minorities, and those living in abusive family or other living situations, such as unregulated and inadequately monitored nursing homes.

Canada has universal health care but experiences some shortages of health care-workers for older residents. The government has no law against elder abuse and older workers lack protection against age-related layoffs or forced retirements.

In Australia, the federal Human Rights and Equal Opportunity Act (1986)¹¹ allows complaints of age discrimination in employment as does the federal Workplace Relations Act (1996)¹². Discrimination against older workers can be either direct or indirect. Direct age discrimination would occur in a workplace where older workers are treated poorly in favour of younger workers, for example, an employer may pressure older workers to resign because they do not fit the youth image of the company. Indirect age discrimination could involve an unreasonable requirement or condition that they are not able to comply with but younger workers would have no difficulty.

Mandatory reporting of abuse in Australia has not gained traction other than in long-term residential care homes. There is a reluctance to adopt the model of mandatory reporting legislatively instituted in many American states¹³ to cover abuse in all settings because of a widespread view that such a strategy would effectively equate elder abuse with child abuse and compel the 'infantalization' of older people¹⁴.

Older persons in Israel endure a gap between existing provisions of the law and the realities of existing practices. Older people are often unaware of available programmes, such as legal assistance. This situation could be improved by educating older persons, creating the position of an ombudsman for the rights of older persons and by mediating

¹¹ http://www.austlii.edu.au/au/legis/cth/num_act/hraeoca1986512/

¹² http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/

¹³ Cripps, D., Biven, J., Northey, J., & Rigger, P. *Abuse of older people: issues for lawyers*, Elder Law Review, vol. 1, 2002. Sydney.

¹⁴ Biviano, N., *Abuse of the non-institutionalised aged: dilemmas of policy and practice*, Australian Social Work, vol. 49(4), 1996, pp. 4146

conflicts or adopting affirmative action programmes, using tax incentives or other actions that assist older persons.

In other developing countries, particularly those that have experienced fundamental and rapid social change, such as the end of apartheid in South Africa, the opportunity to introduce innovative ways to enforce human rights for older persons has been seized. The new legal system in South African puts the test of proof on the discriminator, rather than the older person discriminated against. The South African experience has shown that laws when properly implemented can change the situation of older persons for the better.

In most countries in Latin America references to older persons and age discrimination are contained in the constitution. Nevertheless there is a gap between the legislation and the implementation often due to a lack of political will¹⁵ and older persons are not considered a priority group with regard to budget allocations. Poverty and illiteracy are considerable barriers for older persons when attempting to realize their rights and ethnic and racial minorities are neglected in most countries in Latin America.

In Brazil, the National Law for the Protection of the Rights of Older Persons (Estatuto do Idoso, 2003) has improved the respect for the older persons as it is now mandatory to report any violation of their rights. Yet, there is a lack of awareness of existing programmes for the protection of the rights of older persons, especially in rural areas.

In Bangladesh, family pensions and issuance of identification cards for older persons are very important in realizing economic security in old age. In addition, the use of media to create positive images of old age, especially of older women was seen as equally crucial.

In a number of countries in various regions, universal social pensions (non-contributory pensions available to all persons reaching a determined age), have helped older persons maintain dignity in family as they support themselves and help financially, e.g. with food and school fees.

Specific recommendations:

In this session, the experts agreed on the following recommendations: governments are encouraged: (1) to close the gap between law and implementation of the law; (2) to promote positive discrimination (affirmative action) of older persons as a legitimate step in national laws; (3) to put the burden of proof of age discrimination on violator not victim of age discrimination; (4) to provide easily accessible and free identity documentation to older men and women to access their economic, social, political and civil entitlements; (5) to provide support to older persons' associations through which older persons can be aware and monitor or access their entitlements; (6) to provide free paralegal support and free legal aid to older persons to defend their rights and help to resolve disputes within community structures and to gain them access to formal judicial systems; (7) to provide legal support regarding cases of strategic litigation to create legal precedent and change laws, e.g. on discrimination in social security provision or

¹⁵ *Missing Voices: Views of older persons on elder abuse*, WHO, 2002.

inheritance and property rights; (8) to incorporate a gender perspective in all policy actions on ageing and eliminate discrimination on the basis of age and gender; (9) to provide affordable and appropriate health care, support and social protection for older persons including preventive and rehabilitation; (10) to promote a set of measures aimed at the empowerment of older persons in various areas; (11) to make resources available to national statistics offices to collect, analyze, and disseminate survey and census data disaggregated by age and sex; (12) to initiate a set of measures geared at preventing discrimination against older persons in all fields and areas, changing negative stereotypes in media and other fields; (13) to promote evidence-based studies related to the empowerment of older persons, provision of health care and long-term care on a systematic basis; (14) to use media to create positive image of older persons; (15) to encourage private investment in homes and hospitals designed for older persons; (16) to give visibility to older persons' rights among leading policy makers and educate them about the rights of older persons and the ageing process; (17) to request scholars to include older persons' concerns in their research; (18) to encourage national activity on older persons' rights in cooperation with the UN Regional Commissions; (19) to encourage alternative means of conflict resolution to promote mediation in the home, family and society as early as possible; (20) to support legal mechanisms in late life planning, health care, wills, and power of attorney, living wills, organ donations and property; (21) to assure legal capacity in late life with due process; (22) to ensure participation of older women and men in decision-making processes that affect them; (23) to acknowledge basic rights, such as legal assistance, access to paid family leave, and programmes, such as tax incentives for formal care and relieve for care-givers; (24) to develop elder-specific professional-rules-of-ethics to ensure ethical and professional legal services for older clients; (25) to provide adequate protection and support of community-based senior centers; and (26) to revise existing legislation in accordance with internationally accepted norms (for example on social security, health, property and inheritance) to avoid discrimination on the basis of age and gender.

Session III: National capacity required for effective implementation of laws and policies concerning the rights of older persons

Substantial attention was paid to various aspects of national capacity development. A capacity development perspective concerning the rights of older persons in the national context would enable countries to explore operational challenges arising from policy intentions to provide assistance to their citizens and in particular the communities, groups and individuals affected by policy development.

While the term 'capacity development' arose late last century in relation to international development assistance, it is now being adopted more freely to describe approaches taken by different countries to identify, frame and solve problems through the efforts of individuals and groups working together with national governments to achieve defined goals. The importance of linking issues pertaining to older persons' rights to national development agendas lies in an acknowledgement that any change of emphasis on rights or policy for one group, has implications for national agendas in economic, social and organizational development.

It could be said that capacity development describes aspirational efforts to improve the situations facing particular groups or society at large. For some countries capacity development has relied on international development assistance from e.g. the World Bank or the IMF, but increasingly the need or impetus for socio-economic development may relate more to stimulating the political will to facilitate change than the pursuit of international financial assistance. In some countries socio-economic development has been very slow despite significant development assistance while in others, progress on human rights and protection of vulnerable groups has been an even greater challenge. It seems that political will within any country plays a crucial role in promoting or impeding progress.

Policy emphasis on capacity development in 2009 represents an awareness and acceptance by governments and agencies that the quality of socio-economic development is more appropriately measured in terms of countries' ability to recognize, plan for and manage issues rather than the amount of donor assistance received. A major drawback of donor-driven development is that recipient nations may have little involvement in the planning and design of interventions which are presumed to be supportive of local priorities and sensitive to local contexts. The success or failure of capacity development in any situation depends on the way formal and informal systems (cultural/social) are adopted in such a way as to be conducive to socio-economic development or the desired change without creating disharmony or inequity.

How could one imagine a national framework for capacity development on older people's rights? Poorer countries may require extra capacity to realize the rights of older persons more effectively. For many countries there is a need for a coordinating mechanism to be in place within government to prevent loss of the richness of the work already done on older persons' rights. In other countries organizations such as human rights commissions could be enhanced to focus greater attention on the area of older persons' needs. Various more developed countries have such structures in place already and with a small readjustment and little extra resources, emphasis could be placed on older persons and their human rights issues. Successful implementation of policy change to protect the rights of older persons may need to involve development of performance indicators.

Effective policy response depends on the accuracy and timeliness of information about the extent to which older persons' rights are preserved or not, and the identification of drivers of change. Therefore much depends on the local availability of skill and knowledge as well as the integrity of information systems. Where development deficits are identified, donor agencies can assist nations to develop capacity for identifying, analyzing and solving their own development problems. International support through collaborative research and policy development skills becomes possible only if national leaders hold the view that older person's rights need special protections and that they are willing to support collaboration on development options.

Speed of development needs to be measured in terms of indicators of the country's closing of any identified gap in development and progress towards being able to

independently manage that area of policy or social strategy into the future. Indicators could be developed to demonstrate progress e.g. participation rates among local people; integrity of policy consultation processes and development of policy that is legitimate, feasible and acceptable to those most affected by the change. The quality of national capacity development efforts could be measured through the commitment shown by local people to the success of policy development and implementation processes as well as achievement of agreed development agency outcomes.

Providing these prior steps are successful, a country undertaking capacity development would eventually reach a position where it would be independent of external assistance and have the skills, knowledge, resources and political will to monitor change in areas of capacity deficit as well as being in a position to respond appropriately to indications of ongoing need for development.

Capacity development requires a focus on building skills and knowledge within the local people, communities and governments. To achieve this approach recruitment and training of staff in concerned agencies and government departments needs to be compatible with innovation in policy design and change management involving people. Projects, policies and processes should reflect the norms, values and priorities of the respective country to have a better chance of success.

The participants agreed that a significant shift in approach has occurred around the idea of mainstreaming capacity development skills throughout governments and people involved locally with assisting projects and in most policy forums. When developing new policies, guidance provided to reinforce the benefits of conceptualizing policy in ways that extend beyond traditional frameworks and approaches is needed.

Specific Recommendations:

The following recommendations were made by the participants: governments are encouraged: (1) to create the position of a national ombudsman on the rights of older persons who could offer non-judicial means to receive and resolve grievances at all levels; (2) to create a national human rights commission that would educate citizens about the rights of older persons and provide a venue to resolve grievances and promote affirmative action plans – such a commission could investigate and report on patterns of abuse or other unlawful acts, take action and pursue public education campaigns as well as hearing complaints; (3) to engage in an analysis of budgets to highlight expenditure on older persons and to identify their financial and economic contributions to society. In addition, audits could also be conducted to assess the impact of public expenditure on older people; and (4) to encourage political and social participation of older persons in policy decision making processes; and (5) to provide special training to and certification of professional groups in direct contact with older persons, e.g. lawyers, police, health professionals, and financial sector workers.

Session IV: Addressing the issue of rights of older persons on the international level

An opinion was expressed that most rights in general legal systems are written very broadly and to find references to older persons one needs to drill down substantially. International documents perform an interpretive function in this regard that is very valuable. The principle of dignity is fundamental to the development of human rights law.

All rights documents need to be considered within a non-discrimination framework and within the documents, age needs to be more effectively captured. That this is not already so reflects an institutionalized ageism within legal frameworks.

In considering the body of law that affects the rights of older persons there are essentially two categories: ‘soft law’ geared to the protection of rights which includes documents such as the Madrid Plan of Action on Ageing (etc.) and ‘hard law’ which refers to statutes and conventions which link nationally and internationally and carries with it expectations of implementation and accountability.

In “soft law” there is quite a comprehensive treatment of issues and strategies but the discourse is not couched in legal terms and the flow of power is generally ‘top-down’. Also, no sanctions for non-performance or infringements are attached, making the documents appear inept when compared with hard law. Despite this, soft law is quite specific and people usually abide by it in practice. Soft law is effective in capturing the vulnerability of persons in conflict, yet ‘age’ was not an issue on any agenda until the 1960’s.

In “hard law” the primary responsibility rests with the state to respect human rights; protect individuals and groups; and to fulfill on positive action. State responsibility includes resourcing the implementation and administration of law and in many cases new law requires both paradigm and attitudinal shifts which can be resource intensive to achieve. Therefore policy tradeoffs relate to obligations for states to expend resources and make policy in the most efficacious way.

A possible next step could be to establish a new human rights instrument, within the framework of “hard law” that would strengthen already existing “soft law”, which has been generally accepted and supported.

Session V: Developing an international legal framework on the rights of older persons

Deliberations were held on existing gaps – normative and implementation. It is clear that a normative gap exists within the international legislative framework where older persons are concerned. That is, the law is deficient and fails to act where people are disadvantaged and/or their dignity is undermined or infringed. There are standards offering protection in various contexts but these are dispersed to the point of creating more confusion. There may be some value in collating these standards to provide some clarity.

Within statutes usually the only mention of ‘age’ is within the ‘and other’ categories of examples, thereby lacking strength. It also results in making older persons invisible as a group within the law. The importance of overcoming the invisibility issue is manifold but is particularly crucial around discrimination against older women, an issue that warrants pronounced elevation within the legal framework. The issue of discrimination becomes quite dangerous in some national contexts, particularly in extreme cases such as accusations of witchcraft or other stereotypical image that can lead to vilification and even promoting attacks on older women. There is also a need for clarity around the involvement of private sector actors and their dealings with older persons, especially in terms of financial vulnerability.

The principles of dignity and non-discrimination underpin human rights law as well as international policy documents on ageing. Yet discrimination, neglect and abuse are a daily feature of many older persons’ lives. In considering the body of law that affects the rights of older persons there are two categories, as mentioned briefly above: “soft law” documents geared to the protection of rights (documents such as the Madrid Plan of Action on Ageing or the UN Principles for Older Persons) and “hard law” instruments such as human rights conventions which delineate state responsibilities and carry with them an expectation of implementation and accountability. There is a crucial question however, as to what extent these two sets of law sufficiently promote, protect and fulfill the rights of older persons?

The UN policy documents on ageing and older persons provide a comprehensive treatment of issues and public policy strategies but as “soft law”, they contain no legally binding obligations and there are no sanctions for non-performance. Instead, they incorporate norms and precepts, which governments agree to be guided by, but without any requirement to account for adherence. That said, “soft law” through its specificity can act as an extremely useful guide for policy matters: for example, the work of UNHCR in setting standards for the treatment of older refugees has effectively captured the vulnerability of persons in emergencies, as well as provided useful guidance on how to respond best to the needs of older persons in crisis situations. In general, however, given their non-binding nature, implementation of soft law standards is often weak.

During the review and appraisal exercises for both the Vienna International Plan of Action on Ageing and the Madrid Plan of Action¹⁶ it was noted that many states have failed to incorporate international standards into national legislation and policy action. Moreover, at the international level, linking ageing with development goals has been a challenge. Despite lofty intentions and commitments, ageing often remains on the periphery of internationally agreed goals, frameworks and policy documents, as exemplified by the absence of reference to ageing in the Millennium Declaration and the Millennium Development Goals.

The experts agreed that an analysis of the international legal instruments also points to the existence of a “normative gap” with respect to the rights of older persons. To begin, almost all the key human rights instruments fail to identify age as a prohibited ground for

¹⁶ See reports of the Secretary-General: E/CN.5/2001/PC/2 and A/63/95

discrimination¹⁷, thus obscuring the discriminatory experiences of older people. Moreover, the standards which offer older people protection are dispersed through many human rights texts. The numerous obligations on states *vis-à-vis* older people are implicit in the UN human rights instruments but remain invisible for both Governments and the general public, while the obligations on private sector actors and individuals are not well developed. While the interpretative work of treaty monitoring committees has begun the process of amplifying the rights of older persons, knowledge of this work remains limited. Moreover, it is open to question whether the special vulnerability of older women has been adequately captured by human rights law, and there may be practices which specifically target older people that are arguably not covered adequately by any of the current provisions in human rights law, most notably allegations of witchcraft. Finally, the fact that older people are often especially vulnerable in conflict and natural emergencies has arguably not been addressed effectively by international law.

In addition, the failure of states to abide by the commitments that they have signed up to through human rights instruments amounts to what some have called an “implementation gap”. This is clearly distinct from a normative gap where the current provisions fail to capture adequately ongoing practice which denies rights. Instead, an implementation gap suggests a failure to incorporate international standards into domestic legislation and procedures, or a lack of institutions or other actors competent to implement measures that would result in the fulfillment of the relevant rights. So the bigger question is – is it possible to detect such a gap with respect to the rights of older people?

Answering this question is not easy as proxies need to be found to assess governments’ commitment to furthering the rights of older persons. One source is the reports that states submit to human rights monitoring bodies. An analysis of the reports in the light of the rights of older people is revealing. From 2000-2008¹⁸ the Human Rights Committee which scrutinizes government commitments under the ICCPR considered 124 state reports. Of these, only three made specific reference to actions taken to address age discrimination, and one highlighted the vulnerability of older people in long term care homes. For the same period, the Committee on Economic, Social and Cultural Rights which assesses compliance with the ICESCR considered 122 state reports. In these, 24 references were made to older people and their rights. Likewise, during its sessions for the same period, the Committee on the Elimination of Discrimination Against Women while assessing progress in achieving CEDAW considered 190 state reports, with the experiences of older women referenced 32 times. It is also notable that, to date, only one state has highlighted the rights of older persons through the Universal Periodic Review mechanism. It is open to question whether such figures provide telling evidence of a lack of action on the part of governments to address the rights of older people but these figures do reveal that many states are “age-blind” in their human rights reporting. Moreover, it should be noted that even those states that referenced older people were not always

¹⁷ The one notable exception is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Article 7 which forbids discrimination on the basis of, *inter alia*, age

¹⁸ This section draws on information which was current as of September 2008. It therefore does consider state reports submitted for the late autumn sessions of 2008.

testifying to positive actions taken. Instead, some were merely expressing concern for the situations with which older people were faced (although of course raised awareness is a necessary precursor of action).

During the meeting the participants contemplated several options regarding the possible strengthening of the rights dimension of older persons. Two possibilities emanated from the deliberations: (1) a special rapporteur on the rights of older persons appointed within the UN system and/or (2) an international convention on the rights of older persons. It should be noted that the most direct call for further instruments was made by the Brasilia Declaration in December 2007. Whether the best response to the current situation should be the development of such an international convention on the rights of older persons or the creation of a position of a special rapporteur focusing on the rights of older persons is not clear. Outlining the potential added value of these two possibilities for member states of the United Nations will hopefully stimulate debate on the desirability of using these two tools to enhance the rights of older persons in the future.

A special rapporteur on the rights of older persons would be able to look at the situation of older persons in all member states as well as consider individual problems. The primary purpose of a special rapporteur would be to raise awareness of older persons' rights and issues at national and international levels. He or she could employ the usual special procedures approaches such as visits to member states, commissioning and coordinating research to accumulate the evidence required to support debate and policy development and engaging with the media. The role could act as a catalyst to promote greater commitment to the furthering of older persons' rights. Some suggested aspects of the role are described below. However, these are suggestions only and the list is not exhaustive.

The special rapporteur on the rights of older persons could:

- Receive reports from member states on the state of older persons and offer assistance and advise member states on the better implementation of the Madrid Plan;
- Promote the rights of older people by naming problems and issues and identifying strategies that could be implemented to resolve them;
- Examine the nature and extent of older persons' situations with regard to human rights such as equity, non-discrimination, development etc. and report on these issues as they arise to address issues of vulnerability and opportunity;
- Identify topics and trends with momentum in the UN and work to promote those that could gain traction within the UN processes;
- Support government monitoring of implementation through such mechanisms as a national ombudsman addressing rights-related questions that concern older persons.

The terms of reference for the position of special rapporteur on the rights of older persons are crucial in shaping the role. The personality of the rapporteur would be key, as well as the structure around the position which ideally would be both supportive and flexible, allowing opportunities to be used effectively. In addition, it is important that there be links with other rapporteurs and networks that generate evidence and insights into particular aspects of human rights where older persons are particularly disadvantaged. Such a position would have to be funded either by a sponsoring member state or through collaboration between states or other organizations while not compromising the independence of the role.

A convention on the rights of older persons would add additional weight in furthering, deepening and more precisely defining the rights of older persons. A convention would create obligatory and binding international law. Similar to the adoption of various other human rights instruments, member states would undertake a threefold commitment when adopting such a convention: to respect, to protect and to fulfill the rights enshrined in the relevant text. The obligation to respect demands that states refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect requires states to protect individuals and groups against human rights abuses; and the obligation to fulfill compels states to take positive action to facilitate the enjoyment of basic human rights. A convention on the rights of older persons could draw attention to issues such as non-discrimination, dignity, livelihood rights, pensions and other forms of social protection, health, housing, care and support, participation rights, protection from abuse and exploitation, gender, and the rights of older persons in times of emergencies.

Earlier UN conventions (e.g. the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities) have been effective human rights tools and produced significant and positive social change. In addition, a convention on the rights of older persons would strengthen and complement existing soft law, combat ageism, provide redress for the violation of human rights of older persons and draw attention to the impact of multiple discriminations that older persons face, including the disparate impact of ageing on women.

A convention on the rights of older persons could create new principles that would empower older persons, provide older persons with greater visibility and recognition, both nationally and internationally and provide the foundational basis for advocacy, public awareness and education on the rights of older persons. In addition, it would assist advocates in their work. There is also much to be gained through development activities leading up to a convention and also following its ratification.

The monitoring of the implementation of the convention would encourage ongoing dialogue among member states, civil society, NGOs, the private sector and older persons.

A convention would encourage member states to collect additional data on older person to inform evidence-based policy development. It could encourage a more equitable allocation of resources for older persons, the design of more age-sensitive programmes and the training of staff in new procedures to ensure that the rights of older persons are fulfilled.

The Commission for Social Development as a functional body of the Economic and Social Council has in recent years taken on a role in standard setting. In 2001, a mandate for a draft of the Convention on the Rights of Persons with Disabilities was stalled in the Commission on Human Rights and in response to this, a special committee was established at the Commission to take the idea forward which it did with great success. The evolution of the Commission for Social Development into a body capable of initiating new standards illustrates how bodies outside of the human rights UN system can sometimes provide an efficient forum for contentious issues. Moreover, its work on the Convention on the Rights of Persons with Disabilities may be regarded as a useful precedent, particularly as the Commission is responsible for the implementation of the Madrid Plan.¹⁹

Relatively effective enforcement mechanisms are contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC): country reporting, enhancing monitoring of compliance and internal discussion in member states, as well as individual complaint mechanisms. Member states report to the CEDAW Committee on compliance and implementation difficulties. However, there are no independent investigations. In Bangladesh, NGOs took an active role in the reporting process and this resulted in a more comprehensive report and the improvement in women's rights. The CEDAW Optional Protocol allows women and NGOs to file individual complaints to the CEDAW Committee while enhancing the independent inquiry powers of the Committee. Many scholars view it as a means of enhancing compliance and establishing enforcement mechanisms.

Like CEDAW, CRC requires states to report on implementation. In reporting, government representatives engage in a beneficial dialogue with the CRC monitoring body and internal domestic discussions, highlighting implementation problems. This creates discourse on global human rights, facilitating a global exchange of ideas.²⁰

Overall, the potential added value brought by an international convention on the rights of older persons would include a paradigm shift as how older persons are viewed as a social group as a result of the adoption of such a convention. This would signal a shift from non-binding commitments and mere debate towards tangible rights for older persons. As a result, international cooperation could be strengthened by a convention. In addition,

¹⁹ for procedures, see Lindsay Judge, "The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards", background briefing paper at International Symposium on the Rights of Older Persons, January 2009, p.14

²⁰ For reporting mechanisms, see Israel Doron and Itai Apter, "What difference would a new convention make to the lives of older people?", background briefing paper at International Symposium on the Rights of Older Persons, January 2009, p.4

legislative bodies could start evaluating their existing rights concerning older persons and decide to enhance them if appropriate. The contents of a convention may be used in legal disputes while determining shortcomings in the law regarding the rights of older persons. Also, a convention could be used to teach and promote the rights of older persons. In general, a convention would add normative clarity compared to the current situation. Other secondary objectives may be that a convention would operate as a stimulus to action at a domestic or regional level and raise awareness in society more broadly. Establishing a convention on the rights of older persons would be a strong anti-ageism, anti-discriminatory and mainstreaming tool. Negotiating a convention and establishing a post of a special rapporteur are not mutually exclusive; on the contrary, both options could work to reinforce each other.

Specific recommendations:

The experts agreed to encourage governments: (1) to include information on how they are promoting and protecting the rights of older persons in their reporting to the Human Rights Council as part of the Universal Periodic Review; to treaty bodies on their implementation of international human rights treaties to which they are states parties; and to other regional peer review mechanisms; (2) to consider their support of appointing of a special rapporteur on the rights of older persons; (3) to consider their support of establishment of a comprehensive convention on the rights of older persons; (4) to use the UN system in mainstreaming the rights of older persons more effectively; and (5) to request the UN system through the Secretary-General to include ageing and issues pertaining to older persons into the MDG reviewing process.