

NATIONAL ASSOCIATION OF COMMUNITY LEGAL CENTRES, AUSTRALIA

4th session of Open Ended Working Group on Ageing

INTERVENTION TEXT

I recognize the Chair, distinguished guests, delegates and my NGO colleagues. I acknowledge the traditional owners of the land on which we meet and pay my respects to their elders past and present. I also pay my respects to my elders here today who bring long life experience to this place. We need to listen to them.

I intervene on behalf of the National Association of Community Legal Centres, Australia which has held ECOSOC special consultative status since 2003. The NACLCLC represents 200+ community based legal centres across Australia. CLCs provide legal advice, representation and community development services to their local or special interest communities. Some CLCs specialize in working with older people. All CLCs regularly see older clients.

Some examples of community development with older people include:

Seniors Creating Change

A grass roots group of almost 100 older people who use flash mobs and spontaneous singing in shopping malls and markets and other public places to break down ageist stereotypes. It also has the consequence of combatting social isolation for the members. They are taking their message to outback Australia later this year. You can find them on You Tube under "Seniors Creating Change".

Caring for our elders

An indigenous Women's Legal Program runs healing workshops for older aboriginal women elders. The program is aimed at providing a safe and comfortable retreat to deal with serious issues such as elder abuse, kinship and family dealings, and intergenerational trauma.

Both projects could be easily transposed to other places. They typify the sorts of projects NGOs across the world have implemented to address the specific needs of older people. NGOs are on the ground and see what the needs are, often long before policy makers and legislators are moved to act.

The NACLCLC strongly contends that this Working Group should propose a Convention on the Rights of Older Persons in accordance with resolution 67/139.

A Convention is necessary to:

- Fill substantive gaps in the current suite of instruments. Gaps include elder abuse, neglect and financial exploitation. Additionally, housing, health, social security and

aged care have central importance to the health and well being of older people.

- Ensure a normative template for member states to ensure appropriate and adapted laws, policies and mechanisms.

The principal objections to a Convention seem ill-founded and are easily displaced.

Existing Instruments

It is accepted that the existing frameworks do not offer a comprehensive scheme of protections. There are clearly substantive gaps in the existing UN human rights framework. These gaps include the absence of age as a basis for protection and specific abuses that affect older people.

Existing Mechanisms

Mechanisms like the UPR are only useful where there is a normative standard against which member states' conduct can be measured. No convention – no yardstick. Individual UN complaints mechanisms can only respond to rights given under International law. No law – no individual complaint.

Duplication

Repeating existing rights in a consolidated instrument has no real negative impact. Surely rights that are inherent aren't affected by repetition. Consistency and continuity need to be considered but there are many examples of similar rights appearing across multiple instruments. Nuance is needed where rights intersect such as health and housing in aged care settings.

Abstentions and/or a lack of Consensus

That 108 member states abstained from the vote on resolution 67/139 does not change the simple fact that the absence of a convention for older people has become a stark and obvious omission. In any event this group is now tasked to consider the issue. If there wasn't sufficient interest then there appears to be sufficient interest now.

Time and Expense

Do we turn our back on existing instruments when we realise that treating people with dignity and respect costs? No of course not. Do we say inalienable rights are only those that can be found cheaply? No of course not. Are those that have sheltered and nurtured us and our children and our children's children worth less than other groups currently seen as needing protection somehow? No of course not.

Conclusion

To find that older people should be satisfied with a limited statement of non binding principles perpetuates ageism, the very thing we wish to see eliminated. We do not tolerate systemic racism or sexism but somehow fail to act against ageism.

Many older people feel invisible. For good reason, they are often invisible to everyone but those who would exploit them. Sadly, there is now a recognised anxiety disorder called gerontophobia – a fear of growing old or a hatred or fear of the elderly.

We must break out of a mentality that accepts ageism. It manifests in discrimination, harassment and vilification, which in turn leads to social isolation and neglect even homelessness. It leads to feelings of sadness and betrayal, a loss of all the older person has contributed over their life.

I remind us all, older people are us, now or later. What do we want for ourselves?

Thank you for listening to our submission.

BILL MITCHELL

Intervention by Ms Kim Boettcher, NAACL
United Nations Open-Ended Working Group on Ageing, 4th Session New York
Tuesday 13 August 2013.

Thank you Mr Chairman for giving me the floor.
I acknowledge the traditional owners of the land on which we meet and I pay my respects to their elders past and present.

I am an attorney representing the Australian National Association of Community Legal Centres. My organisation forms part of a network of independent Community Legal Centres in Australia.

My organisation congratulates the Member States for making the effort to be so involved in this 4th Session. I would like the Member States to take away something to think about for the benefit of older vulnerable people who are not seen and not heard. My clients tell me of their isolation, fear of management at accommodation facilities and their sadness about the elder abuse they suffer. They only talk to me because they have client legal privilege at my independent legal centre.

There is a lot of money involved in the aged care business. All too often there is a significant conflict of interest between making money and caring for the older person. I find this time and again to be true in the cases I run for older people.

I respectfully request that the Member States start thinking ahead to a time after the Convention on the Human Rights for older people is in place. Based on my clients' experience, an international, independent and annual monitoring mechanism is necessary. In brief, a Convention could allow monitoring of Member States the following five main areas:

1. Member States' licensing regimes in relation to Home Care Providers and Aged Care Accommodation providers. The regime should include surprise visits to facilities and reviews of Member States' regimes in relation to for example:

- minimum staff training for home care visits and at aged care homes;
- fire safety and emergency procedures – these are often missing and no drills are carried out. Older people have a **human right to a safe environment**.
- meals and services. There is often substandard food or no culturally appropriate food provided.
- Eviction rates where older people have security of tenure, particularly for dementia patients. They are often thrown out after a short stay in hospital. Through gentrification of suburbs, older people get pushed out of caravan parks, retirement villages and so on. **It's just like a gym membership-** the company makes more money out of turnover. Older people have the right to quiet enjoyment of their property and not to live on a developer's construction site.
- Managers all too often say "no one has ever complained before!" Many want to work in isolation.

2. Monitoring should include a review of national Complaints Boards – their processes and their compliance mechanisms. The views of older people and relatives who have made complaints should be considered. Complaints Commissions ought to have authority and resources to enforce rulings.

We see a lot of complaints about medication, personal hygiene, bed sores, hydration/nutrition, eviction and thefts (especially after the GFC).

Currently in Australia, there is a lack of accountability in relation to aged care providers. If a provider company is found to have been negligent, they are told to change their policy. If a staff member of the provider has been the abuser, they are often moved on to a different facility. There is a “slap on the wrist” which is disproportionate to the suffering of the older person.

There is a multiplicity of rights involved in health and housing. This could be reflected in the Convention. International monitoring could also cover:

3. Review domestic violence Death Review Team or Coroner’s reports, if they exist;

4. Legal Instruments

Legislation and legal instruments should reflect the Human Rights endorsed in the new Convention. Or as the South African representative stated on Monday “there should be explicit legal instruments at the national level”. The flow on from legislation introduced at National level would be that states are aligned for the protection of Rights of Older People.

Power of attorney and guardianship documents are state based and should be national. Attorney shopping for power of attorney and guardianship documents is common. Is the legal instrument a protection for older person or power over the older person?

We recommend that there should be a Family Agreements Register for loans, guarantees, elder apartments (granny flats) and the agreement should be unenforceable without registration.

We recommend a national standard contract for entry into aged care homes. The contract should translate into many languages.

We recommend there should be international offences such as: administering medication unlawfully, unlawful restraint of an elder, aggravated breach of fiduciary duty, and aggravated undue influence. Many such offences exist as general law but are not designed specifically to protect older people- nor are the responses to transgressions suited to the needs of older victims.

5. Review of criminal prosecutions.

The International monitoring could all be a simple combination of an annual questionnaire as suggested in this morning’s panel, combined with activity of a special rapporteur. Whatever works most effectively is better than nothing.

In conclusion, if Human Rights of Older Persons are traduced, there must be a swift, effective response by the criminal justice system to remedy the wrong. The United Nations Monitoring system must also be in place.

Thank you.
