



General Assembly

Distr.: General
20 March 2023
Original: English

Open-ended Working Group on Ageing
Thirteenth session
3 – 6 April 2023

Substantive Inputs on the Focus Area “Social Inclusion”

**Working document submitted by
the Department of Economic and Social Affairs (DESA)**

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I. Introduction

1. The Open-ended Working Group on Ageing, established by the General Assembly in its resolution 65/182 with the purpose of strengthening the protection for the human rights of older persons, will hold its thirteenth session at the United Nations Headquarters from 3 to 6 April 2023. The substantive discussions will focus on two areas: right to health and access to health services, and social inclusion. To that end, the Bureau called for substantive inputs from Member States, national human rights institutions, non-governmental organizations and United Nations system agencies and bodies, following questionnaires prepared by the Secretariat on the two focus areas.
2. During the thirteenth session, the Open-ended Working Group on Ageing will consider and discuss the contributions received, based on the working documents prepared by the Secretariat. The present document contains the analytical summary of contributions on the focus area: social inclusion.

II. Analysis of Submissions Received

A. Legal provisions and policy frameworks

3. Submissions identified legal provisions, policy frameworks and measures that address discrimination broadly, national legislation that address discrimination on specific policy areas such as labour and education, and legal provisions and policy frameworks that focus on older persons and address discrimination against them in particular.
4. In terms of general frameworks, inputs from Bulgaria, Cameroon, Colombia, Luxembourg, Tanzania and National Human Rights Institutions from Bosnia, Burundi, Kyrgyzstan, Nigeria, Poland, Portugal and Rwanda identified national Constitutions as the overarching legal framework that prohibits discrimination on several grounds including age, or prohibits discrimination on all grounds, implicitly including age. Prohibition of discrimination is also well defined in anti-discrimination legislation and plans as indicated by Bulgaria, Slovenia, Sweden and the National Human Rights Institutions of Bosnia, Croatia, Germany, Poland and Portugal. Though these provisions often prohibit age as a ground of discrimination, they seldom address older persons or old age specifically.
5. Several inputs identified legal provisions and regulations on specific policy areas that prohibit discrimination as relevant to older persons. These include civil procedure codes (Bulgaria), civil servant acts (Bulgaria), criminal and penal codes (Bulgaria, Luxembourg, Provedor de Justiça in Portugal), Health and safety legislation (Bulgaria), Education acts (Bulgaria), Labour codes and other

employment-related frameworks (Republic of Azerbaijan, Bulgaria, Luxembourg, Age Action Ireland); Justice legislation (Dominican Republic), Social assistance acts (Bulgaria), and social security codes (Bulgaria, Defensoria del Pueblo de la Nacion in Argentina, Provedor de Justiça in Portugal)

6. Legal provisions and frameworks on population ageing and/or older persons address discrimination against older persons specifically, as noted by inputs by Colombia, Dominican Republic, Turkiye, Finnish National Human Rights Institution and civil society in Nigeria. The Commission on Human Rights in the Philippines referred to laws that address other vulnerable groups and include the intersection of other grounds of discrimination with old age, including the Magna Carta of Women, Magna Carta of the Poor, Social Reform and Poverty Alleviation Act.
7. Inputs also addressed the role played by regional and international human rights frameworks on ensuring the prohibition of discrimination of older persons at the national level. At the regional level, these include the Inter American Convention on the Protection of the Human Rights of Older Persons, raised by Argentina and Costa Rica; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons, noted by Cameroon and the Commission Nationale Indépendante des Droits de l'Homme in Burundi, and European Legal Frameworks, particularly the Charter of Fundamental Rights of the European Union, as addressed by Luxembourg, the Institution of Human Rights Ombudsperson of Bosnia and Herzegovina, German Institute for Human Rights and civil society in the European Union. Mechanisms such as Ombudsmen (Bulgaria, Slovenia, Sweden), National Committees related to older persons or other vulnerable Groups (National Human Rights Committee of Qatar) and Centers for Equal Treatment (Luxembourg) equally support the fight against discrimination at the national level, including of older persons.
8. Gaps of existing policy frameworks and measures at the national level in explicitly focusing on the intersectionality of old age with other grounds of discrimination were also identified by inputs. The Institution of Human Rights Ombudsperson of Bosnia and Herzegovina noted that while international and domestic legal instruments regulate a positive obligation to protect all rights, they do not explicitly regulate the protection of rights of older persons. Civil society, including Age Action Ireland, Ageing Nepal, the Portuguese Association of Retired Pensioners, the Japan Support Center for Activity and Research for Older Persons, and AGE Platform Europe pointed out that legal and/or policy frameworks on discrimination usually do not focus or address older persons experiencing marginalization of grounds other than age, thus failing to address intersectional discrimination for this group.

B. Legal age limits that prevent the full and equal participation of older persons

9. Inputs from Member States, including Argentina, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Dominican Republic, Jordan, Luxembourg, Mexico, Sweden, Slovenia, Tanzania and Türkiye, noted that in principle, there were no legal age limitations restricting the full and equal participation of older persons in their societies. Age limits were viewed as discriminatory and strictly prohibited in the national laws and legislative provisions. As set forth in multiple human rights instruments including the European Charter of Fundamental Rights on age discrimination, as well as the Inter-American Convention and the African Protocol, restrictions preventing older persons from fully and equally participating in society in areas such as education, healthcare, financial goods and services were generally prohibited. In most cases, the national legislative frameworks enforcing age limits prohibiting the participation of older persons in societies were less stringent with the exception of employment. In many inputs, statutes for employment allowed for the possibility to justify direct age discrimination, as long as there was a legitimate aim such as labour market restrictions (for example, owing to mandatory retirement ages, age limits in recruitment, flexible work arrangements, and costs related to skills development/training). Nonetheless, even in areas where no formal age limits exist, older persons were systematically left out in many areas of social life, as many of these national anti-discriminatory laws and legislative provisions are poorly implemented or monitored.

Employment

10. Bosnia and Herzegovina, Japan, Kyrgyzstan Rwanda, Türkiye, Philippines and Qatar, established general mandatory retirement ages of 65 or when the employment relationship ends. In some cases, the retirement ages were set lower, Burundi (at age 60), Nigeria (maximum age of entering the public service at 50 years), with other age thresholds even less for women as in the case in the Kyrgyz Republic, Poland and Colombia. The mandatory retiring age in Colombia is 54 years for women and 59 for men, and in the Kyrgyz Republic, men aged 63 and women aged 58 have the right to an old-age pension respectively. According to the Commissioner for Human Rights in Poland, despite existing incentives for older persons who continue to work while receiving their pension, there are enforced age limits: the Act of employment and counteracting unemployment (1994) defines the unemployed person as a person under retirement age (Art. 2.2 b) therefore provisions introduced by this act do not support older persons in age of retirement (60 for women, 65 for men). Age Platform Europe noted that according to the Employment Article 6 of the European Union Employment Framework Directive, the instrument does not protect against age discrimination, but instead justified practices that further restricted older persons to enter and/or remain in the labour market when they reached a certain age. There were a few exceptions such as the retirement ages in Germany at 67 and Portugal at 70. Furthermore, in most cases, in addition to those in informal work, some specialized vocations such as academic staff of universities, politicians, justices or those in legal jurisprudences could work

beyond 70 years. Defensoría del Pueblo de la Nación in Argentina referenced the Pension Reform Law (No.27.426) modified sec. 252 of the Labour Contract Law (No. 20.744), that proposed raising the mandatory retirement age to 70 years in the country. Despite the varying age limitations in employment, the common issue was that many retirees were faced with inadequate income security after their work tenures, with those in informal work suffering the most. The non-governmental organization Réseau FADOQ and the Finnish National Human Rights Institution noted that the pervasiveness of stigma, discrimination, and ageism often prevent the full and equal participation of older persons in the labour market.

Education

11. Many inputs regarded education as a fundamental right and made provisions for older persons to access learning opportunities. Germany, Türkiye, and the National Human Rights Institutions in Japan and Nigeria referenced explicit legislative provisions for trainings, study and opportunities for lifelong learning. While many countries provided their citizens with basic formal and non-formal education opportunities, due to the high costs of education, digital learning platforms, and the privatization of institutions of higher learning, many older persons were systematically left out in education. According to the German Institute for Human Rights, State funding for students (the BAföG programme) was restricted to persons under the age of 45 years, while some tertiary institutions set an age limit at 55 years.

Health care

12. Health care related costs, including insurance, provision of chronic medication and management of terminal conditions including Noncommunicable Diseases (NCDs) amongst older persons to some extent determined legal age limits in this area. Submissions from Bulgaria, Croatia, Germany and Poland noted that in accordance with the European Pillar of Social Rights principle 18, “Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services” as dictated by the “principle of equal opportunities” and protection against discrimination. While many inputs indicated that there were no age limits in the area of health, in most cases, access by older persons to health care and services was not guaranteed. As stated by Age Platform Europe for instance in Ireland age limits are enforced in the provision and access to preventative and surgical treatment, rehabilitation, personal assistance, mobility allowances etc. Some of these restrictions were obligatory especially during the peak of COVID-19, further disposing older persons to vulnerabilities. According to the Equality and Human Rights Commission of Great Britain (EHRCGB), the quality and safety of health and social care is regulated by independent regulators which means that the Government has little control in such instances. The Commissioner for Human Rights in Poland stated that the country implemented measures to ensure access to the basic health care services – especially free medicine for people aged 75 years or over (accessible upon prescription). Similarly,

the Digital Bahar Project in Türkiye avails rooms equipped with digital technological devices in nursing homes for their older citizens. However, in most cases where health services are provided for older persons, the rising costs of medication, insurance and medical care prevent older persons to fully benefit from those incentives. The Community Legal Centres in Australia underscored that age proxies exist in many aspects of life and affect older persons in the country by constraining eligibility or entitlement, including health and care schemes. In most cases, insurance costs including premiums and membership fees often increase significantly after the ages of 65 or 70 years.

Financial goods and services and other areas

13. Many older persons continue to face discrimination and ageism in the financial sector. Inputs suggested that older persons were less likely to receive financial benefits including loans, cash incentives, social protection that could contribute to their income security. According to the National Citizens Center Nigeria, the central bank of Nigeria implemented policies to encourage both private and public institutions to remove structural barriers that prevent the financial inclusion of older persons in the economy. Despite this arrangement, eligibility criteria such as education level, age, gender, informal work, irregular income were still enforced, resulting in many older persons experiencing financial exclusion. Gramin Vikas Vigyan Samiti India added that most older persons were not aware of their legal rights in this regard. According to the Associação de Aposentados, Pensionistas e Reformados in Portugal, tighter bank credit standards are enforced as age increases as seen in health and travel insurance costs for those over 65 years old. The German Institute for Human Rights noted that older persons are sometimes excluded from purchasing certain goods offered on the market, with explicit or implicit reference to age limits, or the prices for these services are increased due to age. This applies above all to risk provisioning (private insurance contracts) and to certain products of the capital market (specialized loans). Age limits also apply sometimes in other private legal transactions, for example, age restrictions in rental car contracts, publication companies restricting ages of authors, disbursements of mortgage loans, and taxation among others.
14. In some cases, both structural and attitudinal barriers including stigma and discrimination prevent older persons to access available goods and services. This is compounded by the existence of non-age friendly environments such as mobility restrictions due to unavailability of wheelchair access, elevators, flexible working spaces, and digital literacy opportunities. In this regard, the Commission on Human Rights in the Philippines stated that through the Bangko Sentral ng Pilipinas the Government offered age-based and targeted services to enhance the financial literacy and consumer protection programs for their senior citizens. Similarly, according to Age Action Ireland, the Roadmap for Social Inclusion (2020-2025) dedicates one of its chapters to the situation of older persons, with particular focus on their income adequacy to ensure their full participation and inclusion in society. HelpAge International asserted that while in most cases age limits are not explicitly

specified, the existing international frameworks are inadequate to guarantee the removal existing age limits. This can be attainable by dismantling structural inequalities and ageism which are important prerequisites for social inclusion of older persons in society.

C. Measures to ensure participation of older persons segregated from their communities

15. Submissions identified three broad targets of measures that seek to ensure the participation of older persons that are segregated from their communities at the national level: measures to promote older persons staying in their communities for longer, activities geared towards providing social and cultural activities to older persons; and actions to guarantee the right to participate in political life through elections.
16. In Argentina, the Programme of Attention to Dependency and Fragility at Home seeks to promote the permanence of people in the social-family community environment, as well as to avoid prolonged and inappropriate hospitalizations and rehospitalizations through the provision of financial support. In Bulgaria, the state has adopted the National Strategy for Long-Term Care, which covers measures for the deinstitutionalization of care for older persons and aims to increase the efficiency of the long-term care system. The German Institute for Human Rights pointed out to funding for housing projects provided by the Government to enable older persons to continue living in their homes, as well as for community housing projects.
17. Many of the inputs to this guiding question revolved around social and cultural activities within and outside institutions to promote the participation of older persons in social and cultural life. Some of the programs brought up by Dominican Republic, Germany, Luxembourg, Turkiye, the National Human Rights Commission of Nigeria, the Commission on Human Rights in the Philippines, Provedor de Justiça in Portugal include digital, financial literacy and other types of training, provision of communal living spaces and recreational, social and religious activities. The use of digital technologies within institutions to communicate with family and loved ones was also addressed by some inputs. The potential of volunteerism to promote social interaction was brought up by Germany. Civil society organization Community Legal Centres Australia identified community visitors schemes as successful interventions.
18. Ensuring that older persons in institutions can continue to exercise their right to vote was raised by Costa Rica, Provedor de Justiça in Portugal and the Finnish National Human Rights Institution. In Portugal, its National Human Rights Institution identified a law providing for possibility of early voting. In Finland, there are election officials that visit institutional care systems and prisons to ensure that people can vote in elections held in the country.

19. The COVID-19 pandemic exacerbated the isolation experienced by many older persons from their communities. The Public Defender's Office of Georgia noted that lockdown measures during the first phase of the pandemic resulted in negative consequences for older persons, even after easing these regulations, which was also noted by civil society in Australia, Ireland and Japan. Age Action Ireland noted that there is no over-arching national policy or service promoting the social inclusion of nursing home residents.
20. National Human Rights Institutions and civil society also discussed the many challenges in ensuring the participation of older persons segregated from their communities. These challenges range from existing measures not being implemented or prioritized, to institutions that are inadequately equipped or lack the infrastructure to enable persons with disabilities to effectively participate, to the lack of specific measures and/or mechanisms. For instance, according to the information available to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, there are no measures to ensure that older persons in institutions who are separated from their communities can continue to participate in their society in the country. Community Legal Centres Australia noted that while state and territory human rights acts include the right to taking part in public life and the protection of families, these laws do not provide an enforceable right to social inclusion while in an institutional setting. Age Platform Europe noted that under the Revised Charter of Social Rights older people residing in institutions can enjoy their sociocultural rights only insofar as this is possible under institutional conditions. As a result, in most cases older persons in institutional settings in the region continue to be segregated from society.

D. Public expenditure budget targeted to older persons*

21. Some respondents noted that there is no aggregate data available about the share of national public expenditure budget targeted to older persons as a distinct group. Some respondent reported on the share of public expenditure budget targeted to older persons by different national Government agencies.
22. In 2023, the total expenses set for the National Institute of Social Services for Retirees and Pensioners in Argentina are equivalent to 4.97 per cent of the general budget of the National Administration for the same year (Law N° 27.701). Bulgaria reported that approximately 275 million euros were allocated in 2022 for the provision of social services to support vulnerable groups. Of these, 40 million euros were designated as funds for social services intended specifically for older persons. In Canada, Old age spending as a proportion of total federal Government expense was 14 per cent in 2021 and old age spending as a proportion of total consolidated Canadian general Government expenditures was 6.9 per cent in 2021. In Colombia, Departmental Assemblies, as well as District and Municipal Councils may issue the

* The conference room paper does not present an evaluation of the overall level and composition of public expenditures targeted to older persons. Information provided is based on inputs from respondents. Expenditure figures are not necessarily comparable.

“Stamp for the well-being of the older persons,” whose main goal is to collect funds for the construction, installation, maintenance, adaptation, provision and operation of various modalities of care and development of social programmes and services aimed at older persons. Of these resources, 70 per cent will be used to finance life centres, and the remaining 30 per cent to finance well-being or social protection centres.

23. A total of 327 billion euros was spent on old-age provision in Germany in 2020 under a comprehensive definition of pension expenditure in accordance with the EU Convention. This includes statutory pension insurance and other old-age provision systems such as civil servants' pensions and occupational pensions. A further 60 billion euros, corresponding to 1.8 per cent of GDP, is spent on provision for surviving dependants, the vast majority of which benefit older persons. In 2021, just under 3.9 billion euros were paid out as cash benefits for basic income support in old age to people aged 65 to 67 years. In 2023, Mexico allocated 318 million pesos budget for services catered to groups with special needs. Mexico estimates that 7.2 per cent of the Government's budget is allocated to welfare programmes, such as the pensions for older persons. In Sweden, against a backdrop of a universal welfare system, funds specifically targeted to older persons includes grants aimed at civil society organisations and at research on issues related to older persons including age-related diseases.
24. Submissions from National Human Rights Institutions noted that 1.6 per cent of GDP in Finland was spent on social and healthcare of older persons, in comparison with 2.2 per cent of GDP in Norway and Sweden. The German Institute for Human Rights noted that areas concerning older persons are the funding of projects on multigenerational homes and grants for policies regarding older or lonely persons and caregivers, as well as the palliative and hospice sector. The Commission on Human Rights in the Philippines requested information from national Government agencies on the share of their allocated budget dedicated for older persons' programmes and activities. The National Commission of Senior Citizens noted that the total appropriation for the Government's social pension programme for older persons in 2023 is around 0.4 per cent of the total national budget. In 2023, the Bureau of Corrections allocated 44 million Philippine pesos to finance its programmes and projects to improve the quality of life of older prisoners.
25. Provedor du Justica in Portugal noted that the 2023 national public expenditure in pensions and social benefits, includes three major categories: social support index update; raising of pensions; solidarity supplement for seniors' reinforcement. The National Commission for Human Rights in Rwanda noted that pursuant to the National Older Persons Policy, the Government will spend approximately 60 billion Rwandan Franc over the next four years on services aimed at improving the dignity of older persons in the Rwandan society.
26. Submissions from non-governmental organizations highlighted that in addition to the expenditure on old-age provision by the Federal Government of Germany, an

annual budget of approximately 20 million euros is targeted towards policy actions related to older persons and demographic change, representing less than 0.01 per cent of the overall budget of the Federal Government. Australia's most recent budget did include reform measures for older Australians following the recent Royal Commission. Despite this, many of the wide-ranging measures sought by the Council on the Ageing (COTA) were not funded. International Longevity Centre Canada noted that work is underway to increase the social inclusion of older persons, including Canada's New Horizons for Seniors programme, which provides funding for projects that make a difference in the lives of older persons and in their communities. New Horizons received additional funding of 20 million Canadian dollars in the 2022 Federal budget.

Possible consideration of normative elements

27. This working document has focused on substantive elements put forward in submissions made to the thirteenth session of the Open-ended Working Group on Ageing in the area of social inclusion by Member States, national human rights institutions, non-governmental organizations and the United Nations system agencies and bodies, as noted at the beginning of this document. The Open-ended Working Group on Ageing may wish to consider discussing normative elements related to this specific right in its fourteenth session, to be held in 2024.