

Open-ended working group on Ageing, 13th session, 3-6 April 2023

Agenda item 6

Panel: Follow-up of the focus areas of the 12th session – Discussion on normative inputs
Economic security and older persons' contributions to development

4 April 2023, 1000-1300

**PRESENTATION ON PANEL ON NORMATIVE CONTENT IN RELATION TO
ECONOMIC SECURITY AND OLDER PERSONS' CONTRIBUTION TO
DEVELOPMENT**

Andrew Byrnes

[SPEAKIGN NOTES – CHECK AGAINST DELIVERY]

Moderator and Colleagues

A. Introduction

My contribution today discusses normative aspects of the focus area “older persons' contribution to development”. I will argue that in this area there are gaps or inadequate protection of the human rights of older persons that need to be addressed by more explicit and tailored guarantees in a new binding instrument.

I put forward three possibilities for inclusion in a new treaty:

- An explicit affirmation of the right of older persons to participate in policy development and decision-making about matters that affect them
- An explicit affirmation of the right of older persons to enjoy the human right to development
- An explicit obligation on States parties to include older persons as agents and participants in development cooperation activities.

B. First, what did the inputs show?

The **substantive inputs** at the last (12th) session showed an uneven picture of the extent to which older persons face barriers to participation in the development process, the extent to which their contributions are captured and acknowledged, and the extent to which they enjoy a fair distribution of the benefits of development.

The **normative inputs** at this session made clear that there was no explicit general guarantee of the right to development in existing treaties nor any specific guarantee of the rights of older persons to participate in and benefit from development. Even in the few cases of national laws relating to sustainable development, there is no specific reference to older persons as specific agents or beneficiaries of development.

For the most part the claim by older persons to full inclusion in development is based on international and national guarantees of the right to participate in political and public life, with one such example being Article 25 of the ICCPR – as well as bundle of other rights cobbled together to address different aspects of the right to participate in and benefit from development. There are also some specific references to the right of older persons to participate in and benefit from development in the Inter-American and African regional conventions on older persons' human rights.

B. Three proposals for normative elements of a treaty

1. Need for an explicit right to meaningful participation in policy development and decision-making

The right to participate in political and public life provides some foundation for a claim by older persons to participate fully and meaningfully in decision-making around social development policies, programs and implementation and to benefit from them. However, it is more limited than specific guarantees in other treaties. For example, Article 4 of the CRPD. This article provides that

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

We need an explicit provision like this to guarantee the right of older persons to full, effective and meaningful participation in the formulation of policies and decisions that affect their lives. Nothing less is acceptable.

2. A tailored version of the human right to development itself

But we may wish to go further and explicitly include a statement of the right to development tailored to the situations of older persons.

The human right to development was recognised by the General Assembly in 1986 when it adopted the Declaration on the Right to Development.¹ The right has been subsequently affirmed in many documents, including the Vienna Declaration on Human Rights of 1993 and the 2030 Framework for Sustainable Development (2015). Intended to ensure that everyone has access to an international and national order in which there is a fair and equitable distribution of resources and opportunities, the right has been much debated. But its core elements are well-established, and in the view of many States and commentators, form part of binding customary international law.

The human right to development has both individual and collective aspects: it is enjoyed by every individual human and by “peoples”. Article 1 of the UNGA Declaration on the Right to Development declares that

is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

The right includes “the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting from development.”

Unfortunately, many discussions of the human right to development make little or no reference to older persons, even as they refer specifically to the situation of children, women, persons with disabilities and other groups. This reflects the low level of visibility of older age in the SDGs. So there is a need to “ageify” the right to development, something which might be usefully done by including elements of the broader right in a new treaty.

3. An obligation to include older persons as agents and participants in development cooperation activities

Another significant gap in the international human rights framework relating to older persons is the absence of references to older persons as a target group for development cooperation. Many States have specifically targeted children, youth women, persons with disabilities or LGBTI persons as partners in their

¹ Declaration on the Right to Development, General Assembly resolution 41/128, annex (1986).

development cooperation policies and arrangements; however, one rarely, if ever, sees older persons as such as a focus of such policies or arrangements.

The only one of the human rights treaties to address the issue of development cooperation and assistance in detail is the Convention on the Rights of Persons with Disabilities. Article 32 of that Convention deals with international cooperation between States and organisations of persons with disabilities and requires States parties to take measures to achieve this, These measures specified, include “Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities” among other actions.

As the number and percentage of older persons increase in the developing world, it is important to ensure that development cooperation programs appropriately reflect this change. A provision along the lines of Article 32 of the CRPD should be considered for inclusion in a new convention.

There are other aspects of older persons and development that could be consider. The three I have chosen illustrate that in this area as well as other areas there is still inadequate coverage – actual “gaps”, not just “possible” gaps -- and relative invisibility of the human rights of older persons that needs to be remedied by a new convention.

Thank you.

As you all know, since its 8th session in 2018 the Open-ended Working Group on Ageing has organised its substantive discussions around a two-stage process. In the first year substantive inputs on a particular right or topic are invited: the goal is to identify the realities of older persons' lives and to answer the questions of whether older persons are enjoying their human rights in that area of whether those human rights are being violated or denied. This is, so to speak, the fact-finding or evidence-gathering stage.

The second stage is the normative input and analysis stage. The broad questions here are:

- to what extent does the international human rights framework guarantee older persons' human rights in these focus areas and address the violations that have been identified?
- if the existing framework does not provide adequate protection (which some call the existence of "gaps"), in what ways can we improve things by strengthening the existing framework, especially in normative terms?

As part of this second stage, regional human rights norms can provide guidance on how the limitations and gaps can be addressed internationally. National-level constitutional and legal norms are also often put forward to illustrate normative options; some of these have been stimulated by existing international and regional binding treaties.

So it has been with the Working Group's engagement with older persons' participation in development, one of this session's two normative focus areas and the one I will concentrate on in my presentation.

C. Introduction

My contribution today discusses normative aspects of the focus area "older persons' contribution to development". I will argue that in this area, as in so many other areas, there are gaps or inadequate protection of the human rights of older persons that need to be addressed by more explicit and tailored guarantees in a new binding instrument.

I will put forward mention three possibilities for inclusion in a new treaty:

- Explicit affirmation of the right of older persons to participate in policy development and decision-making about matters that affect them
- Explicit affirmation of the right of older persons to enjoy the human right to development

- An obligation to include older persons as agents and participants in development cooperation activities.

B. First, what did the inputs show?

The **substantive inputs** at the last (12th) session showed a rather uneven picture of the extent to which older persons face barriers to participation in the development process, the extent to which their contributions are captured and acknowledged and to which they enjoyed a fair distribution of the benefits of development.

The **normative inputs** at this session made clear that there was no explicit general guarantee of the right to development in existing treaties and therefore no specific guarantee of the rights of older persons to participate in and benefit from development. Even in those few cases of national laws relating to sustainable development, there is no specific reference to older persons as a specific agents or beneficiaries of development.

Those inputs made clear that for the most part the claim by older persons to full inclusion in development can be based on assorted international and national guarantees of the right to participate in political and public life, with one such example being Article 25 of the ICCPR – and a bundle of other rights cobbled together to address different aspects of the right to participate in and benefit from development. There are also some specific references to the right of older persons to participate in and benefit from development in the Inter-American and African regional conventions on older persons' human rights.

D. Three proposals for normative elements of a treaty

2. Need for an explicit right to meaningful participation in policy development and decision-making

The rights to participate in political and public life provide some foundation for a claim by older persons to participate fully and meaningfully in decision-making around social development policies, programs and implementation and to benefit from them. However, they are more limited than specific guarantees in other treaties. For example, Article 4 of the CRPD. This article provides that

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

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2. A tailored version of the human right to development itself

But we may wish to go further and explicitly include a statement of the right to development tailored to the situations of older persons.

The human right to development was recognised by the General Assembly in 1986 when it adopted the Declaration on the Right to Development.² The right has been subsequently affirmed in many documents, including the Vienna Declaration on Human Rights of 1993 and the 2030 Framework for Sustainable Development (2015). Intended to ensure that everyone has access to an international and national order in which there is a fair and equitable distribution of resources and opportunities, the right has been much debated. But its core elements are well-established, and in the view of many States and commentators, form part of binding customary international law.

The human rights to development has both individual and collective aspects, being enjoyed by every individual human and by “peoples”. Article 1 of the UNGA Declaration on the Right to Development declares that

is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

The right includes “the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting from development.”

Unfortunately many considerations of the right to development make little or no reference to older persons, even as they refer specifically to the situation of children, women, persons with disabilities and other groups. This reflects the low level of visibility of older age in the SDGs. So there is a need to “ageify” the right to development, something which might be usefully done by including elements of the broader right in a new treaty.

² Declaration on the Right to Development, General Assembly resolution 41/128, annex (1986).

3. An obligation to include older persons as agents and participants in development cooperation activities

Another significant gap in the international human rights framework relating to older persons is the absence of references to older persons as a target group for development cooperation. Many States have specifically targeted children, youth women, persons with disabilities or LGBTI persons in their development cooperation policies and arrangements; however, one rarely, if ever sees older persons as such as a focus of such policies or arrangements.

The only one of the human rights treaties to address the issue of development cooperation and assistance in detail is the CRPD. Article 32 of that Convention deals with international cooperation between States and organisations of persons with disabilities and requires States parties to take measures to achieve this. These measures specified, include “Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities” among other actions.

As the number and percentage of older persons increase in the developing world, it would seem important to ensure that development cooperation programs appropriately reflect this change. A provision along the lines of Article 32 of the CRPD should be considered for inclusion in a new convention.

There are other aspects of older persons and development that could be consider. The three I have chosen illustrate that in this area as well as other areas there is still inadequate coverage – “gaps” and relative invisibility of the human rights of older persons that need to be remedied by a new conventio.

The invitation to submit inputs on this theme produced a range of submissions which outline both the actual contributions to development, though these are sometimes unrecognised or uncounted in official statistics. At the same time the inputs also illustrated also the disturbing range of barriers to older persons' ability to participate in an benefit from development. The widespread existence of ageism and age discrimination, as well as the violation of other rights of older persons, isa thread that runs through this area and poses a barrier.

MY argument today is that the efforts

I first wish to outline the main features of the human *right* to development, which overlaps with, but which is not identical to, the *descriptive* concept of the process of development.

DRTD, art 1:

. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

1. DRTD art 2: "2(1)The human person is the central subject of development and should be the active participant and beneficiary of the right to development."

(3) States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire participation population and of all individuals, on the basis of their active, free and meaningful in development and in the fair distribution of the benefits resulting therefrom.

2.

However, simply relying on the current formulations of the right to development under general international law or in the evolving draft convention on the right to development, is unlikely to be enough to capture the specificities of older persons' lives. Older persons have limited visibility in the mainstream discourse around the right to development.

The following are examples of recent discussions of the right to development that fail completely or substantially to include discussion of the situation and rights of older persons For example,

- The Special Rapporteur on Development, eg report on national plans for recovery from COVID (A/HRC/51/30, paras 72 ff: children, women, persons with disabilities all mentioned; para 77 UN women mentions older women with disabilities, para 78 Indigen peoples and minorities.)
 - The work of the Intergovernmental Working Group on the right to development and the draft Convention on the Right to Development
 - HRC Advisory Committee report on the importance of a legally binding instrument on the right to development³
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- Some national laws on (participation in sustainable development, but almost none recognise the role of older persons as participants in or beneficiaries of development
 - A range of constitutional and legislative guarantees re participation of citizens, some re older persons, but not linked to development
 - Discussions of the right to development – older persons largely visible – considered irrelevant?
 - Relative invisibility in Sustainable Development Goals – which has flowed through to relative invisibility in implementation – see IE Kornfeld Matte’s comments on this
 - Relative invisibility in work of Special Rapporteur on Development, eg report on national plans for recovery from COVID (A/HRC/51/30, paras 72 ff: children, women, persons with disabilities all mentioned; para 77 UN women mentions older women with disabilities, para 78 Indigen peoples and minorities.)
 - Relative invisibility in work of Special Rapporteurs on Environment (check)
 - Relative invisibility in work of IGWG on the right to development and the draft Convention on the Right to Development
 - Relative invisibility in the work of the HRC Advisory Committee on the the importance of a leagly binding instrument on the right to development (A/HRC/45/40)
 - Relatively invisible in development cooperation agreements
 - Lots of general assertions of right to participate – but not so much in treaties (IICPR, art 25 limited) – cp rights in CRPD art 4 and 33)
 - Good focus in UNDESA paper

See also highlighted examples in Bills normative paper for OEWGA13

Right to a clean, healthy and sustainable environment

³ A/HRC/45/40 (2020).

Nothing – a new right, but it has implications for older persons

Recognising older persons' contribution to development

- b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- c) Facilitating cooperation in research and access to scientific and technical knowledge;
- d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

Findings of the CRP

- No consistent articulation and delineation of the human right of older persons to participate in and contribute to sustainable development.
- True at the international level despite the centrality of the concept to international politics and social development agendas
- Also true at the national level in most countries (very few examples) – “few specific examples were given of specific rights to sustainable development, whether generally or for older persons in particular” – para 13)
 -
- For the most part, the most prominent human rights guarantee invoked was the right to participate in political and public life
- Relatively few exceptions – the Philippines is one such
- Are some regional references: but the substantial human rights guarantees appear in the two regional instruments – the Inter-American Convention and the Protocol to the African Charter – substantial normative contribution and potential policy contribution is striking compared to what is available elsewhere

UN invisibility

SDGs – the central policy framework in relation to human and sustainable development – contains three brief references to older persons, but otherwise largely neglects them

Upstream: Contrasted with women, children and persons with disabilities – all groups which have a dedicated thematic convention – as the former Independent Expert on the human rights of older persons pointed out and was reiterated by the German Institute of Human Rights in its contribution

Downstream – means there are gaps in policy resulting from normative gaps.

If you not names, you're not counted and you don't count.

Lack of recognition of contributions: Statistical invisibility

Volunteerism: not captured in national account, therefore not seen as a contribution; overlooking this helps to fuel perception that older people don't contribute more broadly

Lack of adequate age-disaggregated data (para 34)

Development cooperation

Areas: women, children, persons with disabilities, LGBTIA+ (Australia) – but older persons?

NORMATIVE ELEMENTS OUT THERE

Human rights treaties and other instruments with provision relating to development specifically

CRPD, art 4

CRPD, art 32

CEDAW, art 14 relating to rural women

ICESCR art 2

ICCPR and ICESCR, art 1

DIAGNOSIS

Para 36: none of the definition of right to participate in development “adequately captured all the necessary features of specific normative content of older persons’ right to contribute to sustainable development.”

Models

Inter-American Convention

African Protocol

Normative elements needed

Significant amount of work done on the right to development generally since the adopted of the Declaration on the Right to Development in 1986

Unfortunately little reference in that to the role of older persons and their right to participate in, contribute to and benefit from development.

Human Rights Council Advisory Committee

Importance of a legally binding instrument on the right to development, Report of the Human Rights Council Advisory Committee, A/HRC/45/40 (2020): stresses importance and benefits of a legally binding instrument on the right to development, but almost no mention of older persons (other than as one item on a long list of groups affected by particular problems resulting from lack of or uneven development)

Human Rights Council Special Rapporteur on the right to development

Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level, Report of the Special Rapporteur on the right to development, Saad Alfarargi, A/HRC/51/30 (2022), paras 72-

Para 72: children

Paras 73-75: women

Paras 76: persons with disabilities

Para 77: older women with disabilities/older women (contribution from UN-Women):

“77. The COVID-19 pandemic has also further worsened the situation of older women with disabilities.³⁵ As the pandemic deepens, gender-based violence is increasing exponentially in many societies.³⁶ According to UN-Women,³⁷ because of their general vulnerabilities, older women and women with disabilities experience these unacceptable behaviours to a greater degree. Among women who died from COVID-19, 87 per cent were aged 60 years and over

Para 78: indigenous people and minorities

A/HRC/51/39: Report of the working Group on the Right to Development on its 23rd session (Geneva, 16 to 20 May 2022), <https://www.ohchr.org/en/documents/reports/ahrc5139-report-working-group-right-development-its-23rd-session-geneva-16-20-may>

A/HRC/48/63: Operationalizing the right to development in achieving the Sustainable Development Goals - Thematic study by the Expert Mechanism on the Right to Development, <https://www.ohchr.org/en/documents/studies/ahrc4863-operationalizing-right-development-achieving-sustainable-development>

