

European Group of National Human Rights Commissions

Statement to UN Open Ended Working Group

Third Working Session

21 - 24 August 2012

The European Group of National Human Rights Institutions (NHRIs) welcomes the third session of the Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons and the opportunity to contribute our views to the ongoing discussions.

The European Group of NHRIs was established in 2003 to coordinate NHRIs from across Europe. Today it is made up of 36 human rights institutions from across wider Europe¹ and is one of four regional groups which bring together human rights bodies from all over the world, the others being Africa, Asia/Pacific and the Americas. On a global level NHRIs are organised and accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).² The European Group is headed by a Chair NHRI, currently, the Scottish Human Rights Commission, which coordinates and drives the work of the Group and liaises with regional and international bodies including the OHCHR, Council of Europe, OSCE-ODIHR and the EU Fundamental Rights Agency.

We collectively recognise the importance of this emerging area of human rights concern as older persons across the globe, including in Europe, face barriers to the full realisation of their rights. The changing demographics of our region and rapidly ageing population bring an urgency to addressing some of the issues we face. Figures from the European Commission show that life expectancy is increasing and the number of people aged 60 and above in the EU is now rising by more than two million every year, roughly twice the rate observed until about three years ago.³

Our ageing populations present many challenges such as systemic age discrimination and ageism across all areas of life, violence and abuse against older persons, concerns regarding the adequacy of health and social care provision and broader social protections. However, we are also presented with the opportunity to address the issues in ways which focus on the protection and promotion of the rights of all older persons through the progressive development of age-sensitive normative standards and a human rights based approach to addressing the issues affecting older people, including, social inclusion, active ageing,⁴ independent living and participation.

The responses of NHRIS to the Office of the High Commissioner for Human Rights request for information to inform the Secretary-Generals' Report of 2011⁵, show the awareness and concern of NHRIS across our region about the rights of older

1Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, France, Georgia, Germany, Greece, Great Britain, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Macedonia, Moldova, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Russia, Scotland, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine

2 The European Group is the largest of the 4 regional Groups of the ICC. It also contains the most diverse range of NHRI 'types' including; human rights commissions, Ombuds-institutions, institutes and consultative commissions.

3 European Commission, Demography Report 2010- Older, more numerous and diverse Europeans

4 2012 is the European Year for Active Ageing and Solidarity between Generations

⁵ Follow-up to the Second World Assembly on Ageing Report of the Secretary-General, 22 July 2011, A/66/173

persons. Responses from France, Germany, Serbia, Moldova and the UK outlined not only the various relevant legal and policy instruments applicable in their countries but also concerns regarding the non- realisation of rights of older persons, including in relation to poverty of older persons, particularly women, social protection and discrimination in the labour market as well as in relation to goods and services, such as financial services.⁶

Furthermore, a number of NHRIs across Europe are focussing attention on the rights of older persons within their respective mandates. The dedicated activity of our members in this area is illustrative of our concerns about the range of rights issues faced by older people and both the implementation and protection gaps that require to be considered. In particular a thematic focus of older persons and care, both at home and within institutions, has emerged across the region as a priority area of concern for the most vulnerable, and often the oldest, amongst the older population.

For example, the German Institute for Human Rights published in 2006 a study, *Social Rights of Older People in Need of Care*, providing an outline of relevant provision in international laws and a review of implementation of these standards in Germany, illustrating concerns about the realisation of older persons' rights in these settings. A Charter of Rights for people in Need of Long Term Care and Assistance has also been developed in Germany, bringing attention to areas of concern about the quality of long term care and assistance.⁷

In the United Kingdom, the Equality and Human Rights Commission released the findings of an inquiry into home- based care and support in England, drawing attention to issues such as physical or financial abuse, disregarding of privacy and dignity, failing to support eating or drinking and treating older persons as if they are invisible. The inquiry also highlighted the inadequacy of legal protection for older persons receiving home care under UK human rights legislation.⁸ The Northern Ireland Human Rights Commission has similarly conducted an inquiry into care homes for older people in Northern Ireland which calls for human rights principles to be made the foundation of the relevant laws, regulation and training.⁹ The Scottish Human Rights Commission has taken a capacity building approach to the issue, developing human rights training and resources for the care sector in Scotland¹⁰, including participating in the development of a Charter of Rights for persons with Dementia and their carers,¹¹ to increase the duty-bearers' accountability for human rights violations as well as their ability to prevent such violations through development of best practice.

We recognise there are a range of legal and policy frameworks in existence for the realisation of the rights of older people at both the international and regional level. However, it is our view that these are dispersed and do not provide the specificity of protection that may be required to address the implementation gaps that persist. There has also been a historic marked failure to harness the existing protections in such a way which draws adequate attention to the plight of older persons.

For example, in relation to age discrimination, there are prohibitions on direct and indirect age discrimination in the international system, although age is not always

⁶ Submissions to the Secretary - General report, GA res. 65/182
www.ohchr.org/EN/Issues/OlderPersons/Pages/Submissions.aspx

⁷ www.ohchr.org/Documents/Issues/OlderPersons/Submissions/GermanHumanRightsInstitute.pdf

⁸ www.equalityhumanrights.com/uploaded_files/homecareFI/home_care_report.pdf

⁹ www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf

¹⁰ www.scottishhumanrights.com/careaboutrights

¹¹ www.scottishhumanrights.com/application/resources/documents/FINALCharterofRights.pdf

explicitly recognised as a ground of discrimination,¹² and age discrimination has seldom been scrutinised by States nor treaty monitoring bodies. In Europe there are a range of protections against age discrimination and accompanying development of jurisprudence through the European Convention on Human Rights (ECHR), the European Social Charter, the EU Charter of Fundamental Rights, and the EU Council Directive (2000/78/EC) which establishes a general framework for equal treatment in employment and occupation.¹³ It is clear, however, that these standards are varied in scope and applicability and do not provide comprehensive or explicit protection in all areas, for example, in relation to discrimination in the provision of goods and services where ECHR rights are not engaged. Similar concerns regarding the inadequacy of specific age-sensitive standards exist across a range of areas such as violence and abuse of older persons, social security provision, access to justice, and the right to health, including adequate standards around home based and institutional care.

Concerns regarding the adequacy of protection standards have been given recognition by the Council of Europe Steering Committee for Human Rights (CDDH) which earlier this year established a new drafting group, CDDH on Age, with a view to elaborating a non-binding instrument on the promotion of the human rights of older persons.¹⁴

The evidence of both legal and implementation gaps leads us to the view that the status quo is untenable in order to ensure the full protection of the rights of older persons and further action is required. The European Group of NHRIs are committed to continued engagement with the issue of older persons rights and support all progressive standard setting processes. We strongly urge all Member States, including those within its region, to explore the options of various measures and responses to the situation, including a new dedicated international instrument, a new special procedure mandate, as well as a mainstreaming approach to the human rights of older persons throughout existing mechanisms, policies and programmes.

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¹² Explicit reference to age can be found- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7; Convention on the Rights of Persons with Disabilities Article 25 (b) Article 28 (2) (b) Article 13, Article 16; Convention on the Elimination of Discrimination Against Women, Article 11.1 (e). General provision interpreted as including age discrimination provisions- Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights, E/C.12/GC/20; Schmitz-de-Jong v. The Netherlands, CCPR/C/72/D/855/1999 (16 July 2001); X v. UK, App No. 7215/75, 19 Eur. Comm'n H.R. Dec & Rep. 66 (1978)

¹³ The ECHR- Articles 14 and Protocol 12, The Charter of Fundamental Rights of the EU- Articles 20, 21(1) and 23; revised European Social Charter, Article 23; European Council Directive (2000/78/EC)

¹⁴ See- http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/cddh-age/default_EN.asp