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Presentation to the open-ended working group on strengthening the protection of the human rights of older persons

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Introduction

I would like to thank the organizers for inviting me to participate in this meeting. It is a pleasure for me to speak at this session of the open-ended working group on strengthening the protection of the human rights of older persons. I would like to focus my remarks on the role of social security in reducing poverty amongst older persons and contributing to their enjoyment of human rights.

The right to social security is firmly grounded in international human rights law, and several treaties contain specific references to old age protection through social security schemes. While human rights treaties apply to all members of society and as such older persons are clearly entitled to the full range of rights established by them, in practice States are not affording older persons the protection they deserve. Considering current demographic changes, the specific circumstances of poverty in old age, the changes in the traditional family care structure as well as the particularities that the design and implementation of social protection systems should comply with to provide effective protection to older persons, it is possible to argue that there is a gap in the legal protections that are afforded to older persons that must be addressed by policy makers.

Is there a protection gap?

The right to social security is a well-established principle of international human rights law, and applies to all members of society. Several treaties contain specific references to old age protection through social security schemes.¹ Even when no direct reference to old age is made in the norm, it is clear that

¹. Further to articles 22 and 25 of the Universal Declaration of Human Rights (UDHR), it appears in articles 9, 10 and 11 of the International Covenant on Economic, Social and Cultural rights (ICESC), article 5 (iv) of the International Convention on the Elimination of Racial Discrimination, article 11 of the CEDAW, article 26 of the Convention on the Rights of the Child, article 27 of the International

older persons are entitled to enjoy the right to social security equally and without discrimination. The major human rights treaties prevent discrimination on the grounds of a number of illustrative and non-exhaustive grounds, and age, while not explicitly listed, no doubt constitutes a prohibited ground for discrimination.²

Therefore, existing human rights instruments do enshrine the right to social security for older persons. However, even when existing instruments provide protection in certain respects, in many cases a new or more comprehensive standard is required to frame the rights of an affected group more clearly or in more explicit human rights terms. Such standards enable members of the group to protect their rights more effectively and clarify the duties of states at the same time. Moreover, because of the increasingly high incidence of poverty amongst older persons, coupled with the low awareness of human right standards by policy makers, it is reasonable to claim that the rights to social security of older persons are not sufficiently protected. This lack of protection may justify the establishment of a specific standard directly aiming at the protection of the right to social security by older persons.

Having said that, we cannot deny that proposals to create a new standard often generate disagreement because of the inherent difficulties in determining whether or not there is a protection gap. It is my opinion that the diagnosis of gaps should be based on pragmatic analysis (facts on the ground) and not only on the existence of a normative standard. In this context, I am convinced that the right to social security – and more general all economic, social and cultural rights – of older persons are not effectively protected today. Not only are their rights are often neglected, but the situation of poverty of older persons is not always treated as a human rights issue. In fact, it is often seen as something that is just tragic and inevitable, a simple fact of life, especially in the poorer developing countries.

It should be recognized that new international standards are not always the best way to rectify gaps in protection. Even when a clear gap in international law is identified (as I believed is the case with respect to the right to social security of older persons) there are significant risks involved in starting a standard-setting process -. Without strong political will, there is an increased likelihood that the right will be

Convention for the Protection of Migrant Workers and Their Families. The Convention on the Rights of Persons with Disabilities mentions the right to social protection (article 28). At regional level there are several provisions recognizing the specific vulnerability of older persons that call on States to implement specific measures to protect the elderly they also emphasise the right to social security. See, for example, Art. 18 African Charter on Human and People's Rights; Art. 22 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Art. 23 Revised European Social Charter art. Art. 17 Additional Protocol on to the American Convention on Human Rights in the Area of Economic, Cultural and Social Rights.

² The major human rights treaties prohibit discrimination on a number of grounds including 'other status,' which would arguably include age. For example, Article 2 UDHR prohibits discrimination on the following 10 grounds: 1) race, 2) colour, 3) sex, 4) language, 5) religion, 6) political or other opinion, 7) national or social origin, 8) property, 9) birth, or 10) other status. The same prohibited grounds are included in Article 2 ICESCR and Article 2 ICCPR.

watered down (the new standard will provide a weaker protection than a proper application of the existing norm) or that the initiative will fail.³

However, if there is consensus that there is both a protection gap and the political will to effectively address it, then standards to protect the right to social security of older persons must take into account a comprehensive set of factors that are specific to the situation of older persons if they are going to be effectively implemented. I will elaborate on this approach below.

Realizing the right to social security for older persons

Protecting the right to social security for older persons must address a number of obstacles which are unique to this demographic. Social security plays an incredibly crucial role in supporting the livelihoods of older persons. As people age, they tend to be progressively excluded from the formal and informal work markets by employers who prioritize a younger workforce. They become frailer and their need for healthcare services increases, and these needs incur costs that older persons cannot always independently meet. Without reliable income older persons may not be able to access these services and may fall into a vicious cycle in which poor health engenders poverty and poverty engenders poor health.

Increasingly, large proportions of the population are outside the formal employment sector and traditional informal support systems for older persons are changing under the pressure of widespread poverty, the impact of HIV/AIDS and migration. These new factors put strong pressure on the traditional family structure, and as a result families cannot always continue to take care of older persons for whom they previously provided.

Old age benefits, in particular in the form of non-contributory or social pensions (a regular non-contributory cash transfer to older persons that can be means-tested or universal) play a significant role contributing to States' fulfilment of their human rights obligations in regard to older persons, in particular those related to the right to social security (e.g. Art. 9 ICESCR), the right to an adequate standard of living including food and housing (e.g. Art. 11 ICESCR), the right to the highest attainable standard of physical and mental health (e.g. Art. 12 ICESCR), the right to take part in the conduct of public affairs (e.g. Art. 25 ICCPR).

They are also a vital means of ensuring the principle of equality between men and women and reducing gender imbalances. In many countries women have limited access to land and other assets, less opportunity for formal employment because of gender discrimination, and lower education levels. Women are more likely to work in the informal sector, doing low-paid, part-time and irregular jobs.

³ For example, the attempts to develop an international convention on housing rights, and a third optional protocol to the International Covenant on Civil and Political Rights on the right to a fair trial and remedy. See the second progress report of the Special Rapporteur on the right to adequate housing (E/CN.4/Sub.2/1994/20), and the CHR (decision 1995/110 of 3 March 1995) respectively.

They undertake the same physically demanding work as men but for less pay, and generally accumulate less wealth than men throughout their life. As a result, older women tend to be poorer than men. Furthermore, cultural practices of early marriage and women's longer life expectancy worldwide⁴ lead to a situation where women are more likely to be widows than men, and being widowed puts older women at a higher risk of being poor.

Social pensions contribute to improving the status of older persons in the family, thereby protecting them from violence and abuse, and altering their status from burdensome to that of a valuable family member. Additionally, social pensions have wider economic benefits: a stable income enables poor households to access credit, to take risks and make long-term investments, and to stimulate the local economy. Social pensions, like other social protection programmes, can act as stabilizers in times of economic turbulence. This means that they can cushion the most vulnerable against the impact of economic downturns while guaranteeing a certain level of aggregate demand and in turn contributing to limiting the impact of recession.

But this is more than just a question of economics, of promoting growth and development. Overall, ensuring the right to social security through social pensions is a critical element of the protection of human rights of older persons. Social pensions restore a sense of autonomy and dignity to older persons, who do not want to be dependent on others, and give them economic security.

In order to effectively contribute to the realization of human rights of older persons, social pensions should be designed and implemented in compliance with human rights principles and should take into account the particular circumstances of old age. If States choose to pursue new international standards, it is vital that these standards reflect the circumstances of older persons. Let me briefly give some examples of how policies and measures should be designed to achieve this end.

To begin with, States must recognise the complexities inherent in assessing poverty among older persons. Due to a lack of sufficient understanding about the dynamics within individual households, including how income is distributed, often poverty among older persons is underestimated.⁵ Measures of old-age poverty that rely on household income ignore the fact that in many multi-generational households resources are allocated disproportionately towards children and those of working age.

States must remove administrative barriers that prevent older persons from accessing social pensions, such as measures requiring identification documents for registration when such documents are costly or may not exist in countries where many people are not registered at birth. Administrative requirements often affect older women disproportionately as they are less likely to have identity cards or to have been

4 UNFPA, Women Ageing and Health, A Framework for Action, 2007, p.3.

5 World Bank, Closing the coverage gap, 2009, p.41.

registered at birth. There are alternative ways to assess and record ages based on local knowledge and personal references. Furthermore, the establishment of social pensions can be used as an opportunity to improve data collection and registration.

Ensuring that benefits are distributed within safe physical reach and at a reasonably convenient geographic location is part of ensuring accessibility. Limited physical strength and mobility can be a major obstacle for older persons, thus particular attention should be paid to older persons' opportunity costs in terms of transport, loss of labour or caretaker time. While electronic methods of payment (e.g. debit card, smart card and mobile phone) can improve cost efficiency and provide flexibility of access, issues relating to older persons' lack of familiarity with these mechanisms could prevent them from accessing their benefits.

States must ensure that older persons are able to participate fully in political processes and can make their voices heard in public fora. Frequently, participation processes are incorporated to social programmes without serious thought being given to the factors, such as physical impairments and sensory losses, local power structures, and family relations that limit older persons' possibilities to take part in public life and influence decisions affecting them. Relying on family members or community leaders as the only communication channel with older persons limits their ability to voice personal views and can reinforce their dependency on others.

It is vital that social pensions are designed and implemented in a way which ensures that they reach all eligible persons. While States are entitled to implement either universal or means-tested systems, universal pensions are more consistent with human rights obligations. Means-tested pensions are more difficult for older persons living in poverty to access. In Bangladesh, for example, the means-tested social pension scheme is supposed to reach 5% of the total population of people living in poverty, but only 1 in 10 eligible candidates can access the pension. Furthermore, when social programmes are means-tested, women are often excluded. The ability to have access to the programme often replicates power structures and women are less able to influence decisions-making processes.

A universal pension scheme is more in line with human rights obligations as: (a) it responds to the claim of universality of human rights norms, (b) it complies with the principle of equality and non-discrimination, (c) it reduces opportunities for corruption, and (d) there is no stigma attached as it is available to all who comply with the age requirement. In addition, universal provision is the simplest structure with the lowest administrative costs. Several low-income countries provide universal pensions, such as Botswana, Namibia, Bolivia and Nepal.

Universal pensions are also more gender sensitive. They recognize the contributions that women make as care-givers. As it is very simple to qualify, access cannot be manipulated by local elites to the

detriment of women. Since there are more older women than men, women as a group benefit more from universal pensions. In developing countries, universal pensions are the only means by which most women in developing countries are guaranteed income at old age.

Universal pensions are also critical in countries where there is widespread migration of younger generations to urban areas, and where a high prevalence of HIV/AIDs results in greater numbers of older persons caring for orphaned grandchildren.

Final Observations

It is extremely important for the human rights movement to understand the implications of demographic trends which show increasing longevity in the world, and to act accordingly to ensure that the appropriate legal and institutional frameworks are in place to protect older persons and ensure their full enjoyment of all human rights including economic, social and cultural rights.

Integrating ageing populations in policy-making is not just a question of financing welfare policies. It requires a change in the way societies see relations between generations and the roles of different age groups. It may also require States to approach their protection of older persons not only through domestic legislation but also through the adoption of new international standards that can act as a catalyst for encouraging changes at the domestic level.

The protection of the right to social security of older persons is an effective way to prevent them from falling into poverty at old age and to enjoy several human rights such as the right to an adequate standard of living and the right to participation. From the various policy choices available to states, non-contributory pensions must be seen as one policy option that when inserted in a broader social protection strategy and designed and implemented taking into account human rights norms and the particularities of older persons, may greatly contribute to reducing poverty and to realizing the human rights for older persons.