"WHY I COULD NOT SLEEP"
OR
WHERE HAS JUSTICE GONE?

UN Open-Ended Working Group on Ageing
4th Session – August 2013
Panel 4:
Discrimination and Access to Work

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Every body is talking about a ?

what

- Apologies
  - My English
- My thank you
  - UNDESA People
  - Israel MoFA
  - LSE Israel
- My personal bias
- Why I didn’t get any sleep: SOME THING IS MISSING
- In this presentation I would like to try an answer this question.
Preliminary note 1: Introductory Quiz
Question 1: Who is this?

- Clue? ..
- This is: GERAS
- One of the bad spirits made by the goddess of night – NYX (who was the opposite of the goddess of youth HEBE)
- How is he characterized
Intro - Question 2: Who is this?

- Clue?
- This is Ilya Ilyich Mechnikov;
- Russian biologist; Nobel Prize recipient of 1908;
- He coined the term “gerontology” 1903;
Intro - Question 3: Who is this?

- Clue?
- Dr. Robert Butler
- The first to coin the term Ageism in 1969
Last Question: What is common to ALL existing binding UN HR conventions?

- “Age” does not appear as one of the unique categories of anti-discrimination;
- No mention of “ageism”
- You need to “construct” or “interpret” the text in order to apply human rights to older persons
What can we learn at this preliminary stage?

- While the concept of “ageism” is relatively new, the invisibility of older persons and their negative stereotypicalization - is old and is deeply rooted in human history and society.
Preliminary note 2: Is there a “need” for a new HR convention?
The “Normative” Need?

- I believe we are beyond this question.
- Ample evidence has been submitted and provided regarding the “normative” need for a convention.

3 Examples:

- *HelpAge International Briefing Paper* (1st OEWG) (2011)
The Empirical Need?

- In recent years, ample empirical data has been collected and published in support of the need for a convention:

- 3 Examples:
  - Agewell Foundation: *Study on Perceptions towards Human Rights of Older Persons* (Submitted to the 4th OEWG: 2013);
  - Doron, I. *(in press)* *Older Europeans and the European Court of Justice. Age & Ageing*;
What can we learn from this preliminary stage?

I would assert that as of today, there is sufficient evidence, both normative and empirical, to support a clear and convincing argument that there is a real – and urgent – need for a new ICROP.

I would like to further argue that declarations which claim that “there is not enough evidence” or that “there is only an implementation gap” - are not based on evidence but serve as text which hides, in my view, a clear sub-text. But what is this sub-text – this is what I was looking for and could not get to sleep…….
My Key Point: What is missing? Why didn’t I have sleep?? I think I found it:

SOCIAL JUSTICE
Open-ended Working Group on Ageing
Second working session
New York, 1-4 August 2011

Report of the Open-ended Working Group on Ageing

Rapporteur: Léo Faber (Luxembourg)

I. Organization of the session

A. Opening and duration of the session

1. The Open-ended Working Group on Ageing held its second working session, consisting of seven meetings, at United Nations Headquarters from 1 to 4 August 2011.

2. The session was opened by the Chair of the Working Group, Jorge Arguello
My argument: Social justice is a crucial element for the OEWG and the ICROP.

- The “classical” political discussion around “social justice”: distribution
- The “alternative” political discussion around “social justice”: recognition

Part 1: The distinction between “different” kinds of injustice

- Prof. Fraser distinguishes between two different kinds of social injustices:
- The first is the “Socio-Economic” injustice
- Examples are:
  - Exploitation (having the fruits of one’s labour appropriated for the benefit of others).
  - Marginalisation (being confined to undesirable or poorly paid work or being denied access to income-generating labour altogether).
  - Deprivation (being denied an adequate material standard of living).
Part 1 – cont.: The Second Kind of Injustice

- The second type of injustice is **cultural or symbolic**.

- Here injustice is rooted in social patterns of representation, interpretation, and communication.

- **Examples include:**
  
  - Cultural domination (being subjected to patterns of interpretation and communication that are associated with another culture and are alien and/or hostile to one’s own);
  
  - Nonrecognition (being rendered invisible by means of the authoritative representational, communicative, and interpretative practices of one’s culture);
  
  - **Humiliation & Disrespect** (being routinely maligned or
Prof. Fraser now moves from the injustice spectrum to the social collectivities spectrum.

On the socio-economic injustice side, one can find "Exploited Collectives".

The classic example: The Working Class.

The body of persons in a capitalist society who must sell their labour power under arrangements that authorise the capitalist class to appropriate surplus productivity for its
Part 2 – cont.: Despised Collectives

- As opposed to “exploited collectivities” there are Despised Collectivities.

- The sources of this status stems not from economic distribution, but rather from cultural misrecognition

  - Example: Homosexuals. Their mode of collectivity is that of a despised sexuality, rooted in the cultural-valuational structure of society. From this perspective, the injustice they suffer is quintessentially a matter of recognition.
While some groups are “exploited” and other are “despised” some social groups are subject to both kinds of injustice. They are the “Bivalent Collectivities”.

They are differentiated as collectivities by virtue of both the political-economic structure and the cultural-valuational structure of society.

Examples: Gender

Gender structures the fundamental division between paid “productive” labour and unpaid “reproductive” and domestic labour, assigning women primary responsibility for the latter.

A major feature of gender injustice is androcentrism: the authoritative construction of
Prof. Fraser moves now and distinguishes between two broad approaches to remedying injustice that cut across the redistribution-recognition divide.

**Affirmation:**
Affirmative remedies for injustice mean remedies aimed at correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them.

**Transformation:**
Transformative remedies, in contrast, mean remedies aimed at correcting inequitable outcomes precisely by
So, where is all this going: Applying Fraser’s Model on Older Persons

- Are older persons subject to socio economic injustice?
- I would like to argue: Yes.
  - Currently, over half of older people worldwide - 342 million - lack income security and, unless action is taken to improve the situation, it is estimated that, by 2050, more than 1.2 billion older people will be without access to secure incomes (UNDESA, 2007).
Do older persons suffer from recognition injustice?

- Are older persons subject to cultural or symbolic injustice?
- Once again, I would argue: Yes.

Ageism can be seen as a process of systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this for skin color and gender. Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills [...] Ageism allows the younger generations to see older people as different from themselves, thus they subtly cease to identify with their elders as human beings.
The Centrality of Ageism: The Cultural and Symbolic Recognition Injustice

- Ageism – the humiliation of the “elder identity” - is a key material element of any future ICROP:
  - It is unique to older persons;
  - It is universal and exists in all societies;
  - It is manifested in all fields of life;
  - It is rooted in culture;
  - It is internalized by older persons;
  - It will not “vanish” by itself.
The Consequences of Ageism – Empirical Evidence:

- Health services
  - Medical treatments
- Social Services
  - Guardianship
- Economy
  - Invisibility of contribution
- Intergenerational relationships
  - “Burden” on adult children
- The arts
  - Ageist advertisements/movies
- ....everywhere....
Ageism and the Implication of Discrimination in Employment

- There is ample empirical evidence of a reality of age discrimination in employment:
It is clear that older persons are a “bivalent group”:

- They are subject to re-distributional injustice;
- But even more importantly, they are subject to cultural injustice.
- This means they need remedies both on the re-distribution and the recognition fields of justice.
I would argue that what is missing today is not only social justice, but the “Transformation” element of the remedy;

The problem today in the field of rights of older persons is not “enforceability gap”, or “implementation gap”, or “legal construction gap”.

I would argue that the key problem today is that there is a “SOCIAL JUSTICE GAP”
If we really care for older persons we need to start thinking in terms of adopting a social-justice, political-identity discourse that addresses the needs of older persons for cultural-identity social justice.

Understanding this point reveals why MIPAA is insufficient: from a social justice perspective – MIPPA does not transform our social construction of old age. On the contrary: it allows governments to affirm their existing ignorance to the symbolic injustice older persons experience on their daily lives.

In the specific context of this panel - the best anti-age discrimination employment laws will not succeed in changing reality if we do not change the “social mind set” about aging and about older persons.
Final Thoughts

- The roots of “Human Rights” are embedded in the search for “Justice” – in general, and “Social Justice” – in specific.
- Older persons, worldwide, are now demanding social justice: not only on socio-economic, but more importantly, cultural and symbolic.
- As long as there is no ICROP – older persons will not enjoy social justice.
- Hence, the true goal of this OEWG meeting, in my view, is to “re-connect” the fundamental understanding that human rights are about social justice; and social justice for older persons is about having a specific and unique HR
Thank you very much.

Prof. Israel (Issi) Doron