

**Statement to UN Open Ended Working Group on Ageing
Fourth Working Session
12 - 15 August 2013**

European Network of National Human Rights Institutions

Introduction

The European Network of National Human Rights Institutions (NHRIs) brings together 40 NHRIs from across wider Europe, 21 of which are accredited with A-status under the UN Paris Principles. It is one of the four regional networks that make up the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), supported by the UN Office of the High Commissioner for Human Rights (OHCHR).

The European Network of NHRIs works to enhance the promotion and protection of human rights across wider Europe through the establishment, accreditation and support of NHRIs. It supports its members through information exchange; capacity building; engagement with international and regional human rights mechanisms; interventions in policy development and strategic litigation at a European level; and the spreading of best practice. The European Network of NHRIs has recently established a Permanent Secretariat in Brussels.

As part of the ICC, the European Network of NHRIs fully supports and was involved in the elaboration of the ICC statement to the OEWG, which can be found at Annex 1. In addition to the ICC statement, this submission will draw the OEWG's attention to certain elements that should be considered in the development of 'an integral and comprehensive international legal instrument to promote and protect the rights and dignity of older persons.' In addition, we will clarify the specific needs of the European region, which have not been mentioned in the ICC statement. As a result, this submission is for the particular attention of European state members of OEWG.

NHRI input to Regional and International Human Rights Fora

As noted in the ICC statement, NHRIs have already contributed to the OEWG sessions through submissions and, on invitation, as speakers. In addition to this, the European Network of NHRIs has also been active within the Council of Europe's working group on the drafting of a non-binding instrument on the promotion of human rights of older persons (CCDH AGE). The drafting of a new instrument to strengthen the human rights of older persons is a strong indicator that European states are of the opinion that there is a need to strengthen the human rights of older persons in Europe and that there are gaps which need to be addressed and closed.

Furthermore, the European Network of NHRIs has permanent observer status, including speaking rights, at the Council of Europe's steering committee on human rights, including CDDH-AGE. This, in addition to the speaking rights of A-status NHRI at the UN Human Rights Council, underlines the value placed on NHRI input by

regional and international human rights fora. As noted in the ICC statement, we hope that similar participation rights will be granted at OEWG.

Definition of “older persons”

The European Network of NHRIs recommends that, instead of adopting a fixed age limit, the OEWG adopts a definition of “older persons” which recognises the heterogeneity of this group and reflects the social construction of the category “older persons”. Such an approach would focus on removing barriers to the realisation of rights by older people, support to realise autonomy, recognition of the vulnerable circumstances in which many older people find themselves, and protection from harm.

In addition, there would be an added value for existing human rights instruments to adapt the existing human rights norms to protect especially the human rights of older persons in vulnerable living conditions. We would like to draw the OEWG’s attention to the work of the Council of Europe’s working group on a definition of ‘older persons’. We underline the need to make the group visible on the human rights agenda at the international, regional and national level.

European Considerations on Human Rights and Ageing

In relation to the contents of an international legal instrument to protect and promote the rights and dignity of older persons, the European Network of NHRIs recommends that the OEWG considers integrating some thematic issues where, due to specific challenges existing for older persons in Europe, older persons face a higher risk of having their human rights violated. Each of these thematic issues will be considered in turn, including recommended action on the part of European States.

Non Discrimination - Ageism

Older persons should enjoy their rights and freedoms without any discrimination on any grounds. Any new international instrument should clarify States obligations to prohibit, prevent and eliminate discrimination against older persons on all grounds, including age. States need to take effective measures to eliminate intersectional discrimination of older persons, including on grounds of gender, ethnic background, religion and belief, disability, sexual orientation and gender identity and other status. Our experience shows that older women are particularly subject to intersectional discrimination.

As age discrimination is a particular problem in Europe, we recommend that States should make explicit reference to “age” in their national anti-discrimination legislation for all areas. We also recommend that European States combat stereotyping and discriminating against individuals or groups because of their age in all areas of life, to further an inclusive society.

Right to Work and Social Security

Older persons have the right to earn their own living and should not be restricted in this by age limits. Older persons have the right to social security; and States should provide a non-contributory social security system.

Adequate standard of living

Older persons have the right to an adequate standard of living which, where necessary, should be provided through social security systems. The European Network of NHRIs maintains that States should combat poverty of older persons with a sustainable policy on the labour market and social security systems. Older persons must receive appropriate resources in order to exercise the right to participate in public, economic, social and cultural life.

Participation

In order to ensure the participation of older persons in public, economic, social and cultural life, it is necessary to take measures to facilitate assistance, provide for the mobility of older persons and create an infrastructure that is fully accessible for them.

Access to Information and Justice

Appropriate steps should be taken to ensure older persons have effective access to information and to justice. This may require special measures to support those in care to have access to information and legal advice. We also recommend national monitoring mechanisms, which have an awareness raising effect for persons who provide services to older persons.

Autonomy, Self-determination and Legal capacity

Older persons have the right to autonomy and to independent living in the community with access to services. This includes the right to decide where and with whom they live. Services should be available within the community to enable older persons to stay as long as possible in their own homes. Older persons also have the right to self-determination in others areas, with appropriate support. This extends to decision making for example related to property, finance, health care, and funeral arrangements. States should ensure that older persons get the assistance needed to live an autonomous life.

Older persons have the right to legal capacity on an equal basis with others. To ensure this right, older persons must receive support in exercising their legal capacity when they feel the need for it, including appointing a trusted third party of their own choice to help with their decisions. Such an appointed party should support the older person on his or her request and in conformity with his or her wishes, and oversight mechanisms should exist to prevent abuse of this position.

Health and Care

Older persons have the right to the enjoyment of the highest attainable standard of physical and mental health. In order to maintain and improve their health and well-being, States must guarantee that appropriate health and long-term care is progressively available, accessible, and of a sufficient quality. In order to better assess and fulfil the needs of older persons, States should promote a multi-agency approach to health and social care and encourage cooperation between competent services.

The European Network for NHRIs maintains that States should provide for sufficient and adequate residential services for those older persons who are no longer able, or

do not wish, to reside in their own homes. Older persons who are living in institutional care have the right to freedom of movement. It is important that European States ensure that long-term care is available and accessible and fulfil the needs of older persons.

Protection from violence and abuse

Older persons have a right to be protected from violence and abuse irrespective of whether such maltreatment occurs at home, within an institution, or elsewhere. In order to realise this right, effective measures are required to raise awareness among police, social services, health and care workers and others who provide services to older persons to identify risks of violence or abuse in all settings. In order to protect older persons from violence and abuse in Europe, special mechanisms should be created to assist older persons in enjoying their right to access to justice. As persons in care are in a vulnerable position, they often have limited access to information or to legal advice.

A New Convention

As stated in the ICC submission, the European Network of NHRIs supports the development of a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons.

In preparing for the discussion of a new legal document the European Network of NHRIs recommends especially to European States:

- To collect meaningful data on the enjoyment of rights by older persons especially on areas where older persons are at risk, such as long-term care;
- To monitor the national level to show where the gaps in the protection of the human rights of older persons in practice exist;
- To make the group of older persons visible on the national and international level in human rights monitoring procedures;
- To fully implement the existing human rights standards for older persons;
- To start consultations with civil society to get firsthand information on the barriers to the fulfillment of the human rights of older persons;
- To participate in the open-ended working group on ageing to contribute to the concretization of the human rights of older persons; and
- To inform interested groups on the ongoing processes.

Conclusion

The European Network of NHRIs recommends formal NHRI participation in the OEWG for the formulation of a comprehensive international instrument that does not detract from existing human rights standards for older persons. In relation to the contents of any new instrument, we draw attention to specific themes which are of particular relevance to the European region. We look forward to engaging further with the OEWG.

ANNEX 1 – ICC STATEMENT

International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)

Statement to UN Open Ended Working Group on Ageing Fourth Working Session 12 - 15 August 2013

Introduction

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is a network of over 100 National Human Rights Institutions (NHRIs) from across the world, 69 of which are accredited as fully in compliance with the UN Paris Principles (A status).

The ICC welcomes this opportunity to contribute to the fourth session of the UN Open-ended Working Group on Ageing (OEWG), with its revised mandate “Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons” (GA Res 67/138 of 13 February 2013).

1. NHRI input to the OEWG

Thus far, NHRIs have participated on invitation at OEWG sessions, contributed to the relevant OHCHR consultations, and promoted the strengthening of the human rights of older persons at national, regional and international conferences and workshops.

However, NHRIs have not been granted formal participation rights despite the general acceptance in most UN fora that national institutions are a natural partner of the UN given their unique independent status, creating a bridge between the international and domestic arenas.

At the 3rd OEWG session in 2012, a number of delegates and the closing statement called for the “greater involvement of national human rights institutions [...] for the improvement of the condition of older persons“. The ICC therefore recommends that A status NHRIs are formally recognised as a key stakeholder within the OEWG process and are granted formal participation rights.

2. Existing Human Rights Standards

The ICC recognises the urgency of increasing understanding and awareness as well as respect, protection and fulfilment of the human rights of older people. Across the globe, we have seen significant achievements in increasing the life expectancy of older persons, leading to fundamental demographic change. However this has led to an increase in the scale and degree of the barriers faced by older people to the full realisation of their rights and inclusion in society.

We urge the OEWG to ensure that any new binding human rights instrument on the human rights of older persons take into account existing international standards and that it must not lower these standards. To this end, we draw particular attention to the binding human rights standards concerning persons with disabilities, as enshrined in the UN Convention on the Rights of Persons with Disabilities. We also draw attention to the human rights of older migrants.

Any new legal instrument should clarify the States' obligations to respect, protect and fulfil human rights of older people, particularly in areas where older persons are at higher risk of their human rights not being fully realised. This may be as a result of age-based discrimination or failure to adapt laws, policies and practices to the particular circumstances of older people. Although many human rights apply to older persons, they cannot be fully realized due to existing gaps in the human rights protection and barriers in society. The starting point of any effort is the inherent human dignity of older persons.

The ICC also wishes to draw the OEWG's attention to the extensive regional work that has been undertaken in this area, including on development at this stage of draft regional human rights instruments on the rights of older people.

3. Towards a New Convention

The ICC supports the development of a comprehensive international legal instrument to promote and protect the rights and dignity of older persons. A legally binding document would assist in providing the highest possible protection for older persons and its special focus would make existing rights more concrete and the group itself more visible.

To prepare for further discussions on a new legal instrument the ICC recommends that all UN Member States:

- collect meaningful data on the realisation of human rights by older persons especially in areas where older persons are at risk e.g. those in receipt of long-term care services whether at home or in institutions;
- review where the gaps in protection of the human rights of older persons exist in practice.
- seek to advance awareness and understanding of the human rights of older persons at the national and international level;
- fully implement the existing human rights standards for older persons;
- begin consultations with national and international civil society to increase States' understanding of the barriers to realisation of human rights faced by older persons;
- encourage the greater participation by all UN Member States in the OEWG in order to contribute to the clarification of the human rights of older persons; and
- disseminate information and create greater awareness at a domestic level about the on-going UN processes.

Conclusion

The ICC would welcome engagement with the OEWG on ways in which NHRIs can be provided with formal recognition and participation rights in this important UN process. Furthermore, the ICC urges the OEWG to ensure that any international legal instrument to promote and protect the rights and dignity of older persons builds upon existing human rights standards, takes account of the heterogeneity of older persons and the current realisation of their rights. We look forward to further involvement in the future deliberations of OEWG.