

The key elements on the normative content for the development of a possible international standard on the protection of the rights of older people to equality and non-discrimination and the right to live free from violence, neglect and abuse.

This joint submission of German Institute for Human Rights and Commissioner for Human Rights of the Republic of Poland (both Status A NHRIs) is based on conclusions from an experts' discussion held during a workshop in the Office of Commissioner for Human Rights in Warsaw on 7th March 2018. The input should further the discussion on the content of an international instrument. It should be mentioned that both institutions fully agree that an international binding instrument would provide the strongest protection for the rights of older persons. The contribution made by around 20 experts hereby shall be acknowledged.

Key elements of the rights to equality and non-discrimination for older persons

Following discussions at the 8th Session of the OEWG in 2017, the decision to invite relevant stakeholders to submit normative context on the two thematic areas discussed is welcome. We firstly wish to highlight the importance of referring to the non-discrimination provisions in the preamble of the new international instrument, which shall be introduced as a binding convention on human rights of older persons. The principles should be then defined in the preamble of the new instrument and the barriers in full enjoyment of human rights and fundamental freedoms should be identified.

What should be taken into account?

- Antidiscrimination clauses in already existing, regional human rights regimes should be analyzed.
- Discrimination is a barrier to the full enjoyment of human rights and fundamental freedoms and violates human dignity regardless of age.
- Indirect, systemic discrimination, caused by a failure to see the constant, stepwise change in individual conditions and its consequences which are likely to be foreseen, and included as an assumption in all states activities focused on creating more sustainable, age-friendly societies.
- Although the experience of age discrimination is a universal issue, ageing and being old in different regions of the world might pose different challenges for the national and local communities.

- The new instrument shall frame ageing as a natural process, which can be effectively supported in order to protect the right to dignity, with a focus on preserving the best quality of life in older age and living to their full potential at the same time allowing individuals and society to take advantage of/benefit from making societies more inclusive for older persons.
- State parties should be tasked with raising awareness on ageing and the rights of older persons. It shall be focused on its positive aspects, not avoiding indicating needs combined with the process of ageing.
- Discrimination on the grounds of age is based on stereotypes against older persons, perceived as vulnerable – the states should then be obliged to raise awareness, counteract negative stereotypes and prejudices. The potential and capabilities of older persons should be emphasized, as well as the value of the positive contribution which older persons bring to society.
- Violence against older persons might be motivated by prejudice and hatred – it is recommended to adopt legal measures e.g. changes within criminal law provisions by indicating age as grounds for discrimination.

What the anti-discrimination clause should include:

- The prohibition of it should cover all areas of life, private and public spheres and all rights set forth by law.
- All older persons, without any discrimination on the grounds of age, should be entitled to equal and effective legal protection against discrimination on all grounds.
- The obligation for the state to eliminate structural and institutional discrimination, which lead to the exclusion of older persons and denial of their human rights.
- Cumulative and intersectional discrimination, including a specific situation of older women, LGBTI persons, persons of foreign origin, persons with disabilities, persons of different beliefs and others
- Positive actions should be allowed – states may adopt measures with a view to ensuring full equality in practice for older persons.

Key elements of the right for older persons to freedom from violence, abuse and neglect:

What should be covered by the clause:

- The clause should cover all forms of violence, abuse and neglect by public and private actors – through the state’s obligation to respect, protect and fulfil
- include financial abuse
- The clause should cover structural violence against older persons

- The clause should cover violence in all settings – at home and outside – mentioning settings with the highest risks e.g. homes, care institutions, prisons
- It should apply in an intersectional approach, e.g. older persons in poverty, older women etc.
- The clause should cover a component for prevention, reaction and remedial action
- The clause should include a reporting and monitoring procedure
- The state should have the obligation to take measures to investigate claims that violence or abuse against an older person has occurred
- It should cover an easy accessible complaints mechanism if needed
- The state should have the obligation of carrying out awareness raising activities to the common occurrence of violence, abuse and neglect in order to encourage higher rates of reporting. Awareness raising shall also focus on accessible remedies for victims of violence, abuse and neglect.
- The states should give victim of violence, abuse and neglect access to an effective complaints mechanism which reaches timely decisions
- Older persons who are victims of violence, abuse and neglect should get sufficient support to remedies and their right to gain adequate redress
- It should include an obligation to collect, disaggregate, analyze meaningful data on all forms of violence, abuse and neglect

What should be taken into account?

- A convention should apply a victims' perspective: preventive, reactive and remedial
- A new convention should also focus on specific categories of victims – it should delineate, but not limited itself to, specific groups.
- The prevention of structural violence against older persons with special focus on home and institutional settings. In a local community and in institutional facility a comprehensive inner policy shall be introduced in place - with clear intervention procedures – what to do in cases of violence.
- Mandatory reporting of suspected abuse should be introduced by law (there is a need of balance between protection and autonomy)

Additional general suggestion on making the discussed instrument a new-generation international law standard

- a) Ensure that a new instrument does not lower the reached international human rights standards.
- b) A new convention needs to declare clearly that the duty bearers are state parties.
- c) It should be stated that the rights holders are older persons – the group to which the convention will apply needs to be described to show the diversity of the heterogeneous group around the globe and to deal with different cultural approaches/understanding
- d) Framing the whole document as a new-generation law means i.a. that it shall not only adopt a victims' approach but also/mainly stress the positive potential of older persons and assure the enjoyment of their capability and human rights on an equal basis.
- e) It shall include procedures and implementation practices of a new kind – e.g. a new smart monitoring mechanism, which would be a response to the overburdened reporting system. Many UN member states are overwhelmed with reporting, and some of them do not report at all because they lack resources.
- f) There is discussion among experts invited to the workshop mentioned above whenever the convention should - or should not - include reference to the different perspectives of Global South and Global North, bearing in mind that human rights are universal, and experience of the ageism is almost the same. But older persons live in different contexts throughout the globe. It might be referred to in the frames of mutual learning from good practices and different approaches to the combating age discrimination and violations of the dignity of older persons.
- g) The instrument should indicate the changing technologies which will play a role in the lives of older persons and ageing societies in the future and frame them in the context of human rights as well, e.g. autonomous cars may allow older persons to use private transport for longer than might otherwise be the case; water treatment innovations may help older persons to access clean water in the context of global warming. Tough the new instrument shall counteract the perspective of older persons being managed by new technologies as subjects.