

Office of the High Commissioner for Human Rights

Normative standards in international human rights law in relation to older persons

Analytical Outcome Paper

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I. List of Acronyms

African Charter of Human and People's Rights- ACHPR
American Convention on Human Rights- IACHR
Committee on Economic, Social and Cultural Rights- CESCR
Committee on the Elimination of Discrimination Against Women- CEDAW Committee
Committee on the Rights of Persons with Disabilities- CRPD Committee
Convention on the Rights of Persons with Disabilities- CRPD
Council of Europe Steering Committee for Human Rights- CDDH
Council of Europe drafting group- CDDH on Age
Department of Economic and Social Affairs- DESA
European Convention on Human Rights- ECHR
International Covenant on Civil and Political Rights- ICCPR
International Covenant on Economic, Social Cultural Rights- ICESCR
Office of the High Commissioner of Human Rights- OHCHR
Organisation for Economic Cooperation and Development- OECD
Parliamentary Assembly of the Council of Europe- PACE
United Nations Open-Ended Working Group on Ageing for the purpose of strengthening the human rights of older persons- OEWG
United Nations Educational, Scientific and Cultural Organization- UNESCO
World Health Organisation - WHO

II. Executive Summary

General Assembly Resolution 65/182 established the Open-Ended Working group on Ageing for the purpose of strengthening the human rights of older persons (OEWG) with a mandate to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.¹ This process is being echoed and further progressed at a regional level in the Inter-American, African and European systems, each of which recognize the inadequacy of current mechanisms and are seeking to further develop normative standards of protection within their own contexts.²

The previous OEWG Working Sessions have largely focused on understanding the current situation of the human rights of older persons around the world, including existing frameworks by exploring areas of non-implementation of older persons' rights.³ This paper provides further legal analysis of the applicable normative standards⁴ at the international level to inform discussion at the third Working Session in August 2012. The analysis supports the view that there is a demonstrable inadequacy of protection arising from normative gaps, as well as fragmentation and a lack of coherence and specificity of standards as they relate to the experience of older persons.

Human rights are universal by definition and therefore the whole range of internationally recognised human rights standards and principles protect the rights of older persons in general. Although there are a few explicit references to age in the core treaties,⁵ and numerous implicit obligations which relate to older persons, there are emerging claims that there are specific human rights features particular to their situation, which are not adequately addressed by relevant human rights instruments.⁶ This report explores these claims through a consideration of existing norms, thereby exposing some of the limitations in the argument that older persons are sufficiently protected by the existing framework of protection.

Illustrative progressive examples from regional human rights law are drawn upon to provide guidance on areas where international human rights norms could be strengthened, clarified or elaborated. While this report shows a clear complementarity between the regional and the international approaches to the protection of the rights of older persons, the need for a comprehensive and systematic approach, at all levels, to the human rights of older persons remains clear.

1 A/RES/65/182, para 28.

² See- <http://www.oas.org/consejo/cajp/personas%20mayores.asp>; http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/cddh-age/default_EN.asp; and African Commission on Human and Peoples' Rights Report on Focal Point on the Rights of Older persons in Africa, Commissioner Y.K.J. Yeung Sik Yuen

³ Reports of the United Nations OEWG - <http://social.un.org/ageing-working-group/>

⁴ For further analysis see E/2012/ and Human rights of older persons: International human rights principles and standards, OHCHR, Background paper, revised and updated Open-ended Working Group, 18- 21 April 2011

⁵ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7; CRPD Article 25 (b) Article 28 (2) (b) Article 13, Article 16; CEDAW, Article 11.1 (e)

⁶ E.g. A/810 91 and A/CONF.157/PC/61/Add.8.

In summary, there are areas, such as age discrimination provisions, where the historical failure to name older persons as a protected group has contributed to their relative invisibility in terms of human rights protection. In other areas, such as in relation to the right to health, education, housing or access to justice, the standards of protection are so broad in scope and lacking in specificity when it comes to the lived experience of older persons and barriers they face in the exercise of these rights that it may be concluded that there is an inadequacy of protection, or indeed normative gaps.

In areas such as the right to social security, or the protection of older women, human rights mechanisms have attempted to address the particular concerns of older persons and elaborate on existing standards.⁷ While acknowledged contributions in the normative standards setting process this mainstreaming approach has not, however, been adopted across the system and is subject to a range of inherent limitations in providing either legally binding standards for States and other actors, or a much needed comprehensive framework of protection for the realization of the full range of rights.

Other areas related to the experience of older persons are all but completely overlooked by the human rights system, such as the rights issues arising in the delivery of home, institutional or residential care services, or the rights engaged at the end of life and access to palliative care. While we may seek to uncover the relevance of existing standards through progressive interpretations and careful analysis, overall it would appear that there are both normative and protection gaps and a requirement for evolving clear and comprehensive standards to ensure implementation at a national level.

Recognition must be given to the range of partially relevant normative standards which have come into force with the advent of the Convention on the Rights of Persons with Disabilities (CRPD), such as the right to independent living, legal capacity, participation in decision making and the concept of reasonable accommodation or universal design.⁸ However, the CRPD standards do not apply *in toto* to the situation of all older persons, nor are they sufficiently tailored to the situation of older persons. Furthermore, the situation of older disabled people is not necessarily given sufficient attention in the application and implementation of the CRPD standards. In sum, not older persons are disabled, and not all age-specific standards are contained in the CRPD.

Intersectional and multiple discrimination affecting older persons based on gender, marital status, minority status, health status, sexual identity or orientation, citizenship or migrant status etc requires careful consideration. In particular the rights of older women warrant specific attention given the demographic statistics of ageing⁹ and systemic inequalities throughout women's lives which have cumulative impacts and repercussions for the realization of rights in older age.¹⁰ Without a holistic, comprehensive approach to the protection of the rights of older persons addressing these complexities, gender and minority group sensitive approaches are in danger of

7 E.g. C/2010/47/GC.1; CESCR, General Comment No. 6; A/HRC/18/37; A/HRC/14/31.

8 Article 19, Living independently and being included in the community; Article 12, Equal recognition before the law; Article 29 Participation in political and public life; Article 30, Participation in cultural life, recreation, leisure and sport; Article 2, definition of reasonable accommodation and universal design.

9 A/66/173, para 3

10 CEDAW, General Recommendation No. 27, CEDAW/C/2010/47/GC.1

becoming peripheral considerations, despite their importance to the full realization of rights for all older persons.

III. Introduction

In recent decades the composition of the world's population has dramatically changed with life expectancy increasingly exponentially.¹¹ Despite this demographic transformation, and the societal changes and challenges it poses, it is only recently that a human rights analysis of these issues has begun to emerge at either an international, regional or national level.

In December 2010, the United Nations General Assembly established the OEWG, with a mandate to consider the existing international framework, its gaps and ways to address these, including by considering, as appropriate, the feasibility of further instruments and measures.¹² The work carried out by the OEWG to date has highlighted the distinctive experience of older persons globally and illustrated that older persons are a minimally definable population group based on common characteristics or shared experience. Furthermore, the work of the OEWG has given testimony to the recurring human rights issues relating to age discrimination, violence and abuse, inadequacy of health and social care provision and broader social protections. This testimony highlights gaps in the normative framework and the according invisibility¹³ and non-implementation of existing standards as they relate to the older person¹⁴.

In some regions there has been an increasing recognition of the gaps in protection and an interest in evolving understanding of the standards of protection necessary for the full realization of human rights of older persons. The African Commission for Human and People's Rights will later this year consider a Draft Protocol on Older Persons to the African Charter.¹⁵ The Inter-American system has similarly drawn attention to the rights of older persons in recent years, and the need for strengthening protection at regional and international levels.¹⁶ A Working Group has been established, tasked with preparing a draft Inter-American Convention for Promoting and Protecting the Rights of Older Persons for further negotiation over the coming year.¹⁷ The initial report of the Working Group explicitly recognises that a legally binding instrument to safeguard the human rights of older persons is warranted, not only by the fragmented state of the legal framework but also because of the specific nature of protection needed by older persons, given the urgency imposed by the rate of demographic change.¹⁸ Finally, in Europe, the Steering Committee for Human Rights (CDDH) of the Council of Europe agreed in February 2012 to create a new drafting group (CDDH on

11 A/66/173

12 A/RES/65/182, para 28.

13 E.g. Help Age International's Briefing paper for the first working session of the Open Ended Working Group on Ageing, April 18–21 2011, provides a high-level but indicative review of the limited references to older persons by treaty monitoring bodies and special procedures.

14 Reports of the United Nations OEWG - <http://social.un.org/ageing-working-group/>

15 African Commission on Human and Peoples' Rights Report on Focal Point on the Rights of Older persons in Africa, Commissioner Y.K.J. Yeung Sik Yuen; Draft Protocol to be considered at 52nd Session. 9-22 October 2012, Cote d' Ivoire.

16 Regional Strategy for the implementation in Latin America and the Caribbean of the Madrid International Plan on Ageing; the Declaration of Brasilia for the Latin American and Caribbean Region (2007), the Declaration of Commitment of Port of Spain of Plenipotentiaries, Organization of American States, OAS (2009); resolution 2455 on human rights and older persons, OAS (2009); the Plan of Action of the Pan American Health Organisation/ World Health Organisation, including Active and healthy Ageing (2009)

17 See- <http://www.oas.org/consejo/cajp/personas%20mayores.asp>

18 Report on the Situation of Older persons in the Hemisphere and the Effectiveness of Binding Universal and Regional Human Rights Instruments with Regards to Protection of the Human Rights of Older Persons; December 5, 2011; OEA/Ser.G/CAJP/GT/DHPM-14/11 rev. 1

Age),with a view to elaborating a non-binding instrument on the promotion of the human rights of older persons.¹⁹

Some governments in both developed and developing economies have recognized the normative gaps in protection for older persons at the national level and have developed innovative policies, strategies, national plans of action and legislative measures to respond to the challenges of ageing populations. These policies are generally inconsistent however and do not indicate the presence of comprehensive legal, policy and institutional frameworks for the protection of the human rights of older persons.”²⁰ Furthermore, in many instances despite the adoption of legislation at a national or regional level, in practice the rights of older persons have not been adequately protected, monitored or enforced by domestic administrative mechanisms and courts.

This report seeks to contribute to and inform the OEWG discussion from a substantive human rights perspective by providing a high level analysis of the existing international human rights framework and highlighting the normative gaps and lack of coherence in the respect, protection and fulfilment of human rights of older persons across the range of civil and political and economic social and cultural rights.

The scope of this report does not seek to provide a comprehensive exploration of the full range of rights to be enjoyed by older persons but serves as a starting point of analysis in key areas of concern, covering broad thematic areas, along lines previously identified,²¹ such as age discrimination, violence against older persons, the right to social security and protection, right to health, right to work and right of participation.

The analysis is informed by the Expert Group discussion convened by OHCHR and UN DESA in May 2012 where the substantive human rights standards were discussed across a range of relevant subject areas and a broad consensus was reached regarding the pressing need for both the consolidation of the dispersed range of existing standards and the development of new standards to fill protection gaps.²² This evolving process will benefit from a cross fertilisation of standards across the international and regional frameworks and as such this report draws on where standards at a regional level may assist us in the elaboration of international norms.

IV. Definitional issues

One of the first challenges in articulating the rights of older persons may be to define “older persons” themselves as a distinct population group.²³ There is no comprehensive definition of older persons available at either the international or regional level. It is recognised that defining older persons is a complex issue reaching beyond chronological age to take account of other determinants. The status of older persons is arguably also a social, political and economic construct, which may be geographically and culturally relative. Indeed the World Health Organisation (WHO)

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

20 A/66/173, para 78

21 A/66/173

22 Expert Group Meeting on Human Rights of Older Persons, May 2012- <http://social.un.org/ageing-working-group/egm2012.shtml>

23 Similar challenges exist in relation to other groups such as children, racial groups, indigenous peoples etc which has not ultimately been an impediment to specific treatment.

defines ageing as the “process of progressive change in the biological, psychological and social structures of individuals.”²⁴

Older persons are diverse in their characteristics even within population groups and experience of old age may differ according to gender, race and socio-economic status or other status. Older people can, on the one hand, be a relatively powerful group in society, with accumulated wealth, benefiting from the support of their descendants and a culture which bestows respect, while on the other hand they may be viewed as a vulnerable segment of the population experiencing poverty, discrimination, isolation, dependency and even abuse. This experience of discrimination and exclusion, as well as the paradoxes often inherent in the situation of older persons, arguably means that despite differences, there is commonality in the experience of older persons sufficient to warrant special protection.²⁵

It should be noted that much attention was given to the issue of definition when the Convention on the Rights of Persons with Disabilities (CRPD) was drafted.²⁶ While some felt that by omitting a definition people with certain disabilities may be excluded from the protection of the Convention the prevailing view was that the Convention should not include a definition of disability as any definition would necessarily exclude some people and that over time the definition may change. Moreover, a person who may be considered as having a disability in one society or setting, may not in another, depending on the barriers that may exist in any given context.²⁷ The solution adopted by article 1 of CRPD is flexible – instead of an exhaustive definition, it provides an illustrative definition which does not prevent States to adopt a more expansive one.²⁸

Notably, the CDDH on Age has, to date, not set any age limit but rather refers to the vulnerability of persons resulting from ageing, which interacting with social attitudes, perceptions and other factors or barriers results in forms of discrimination or of limited- or denied- enjoyment of their human rights²⁹.

Nevertheless, evidence clearly highlights the commonality of experience of older persons. Marginalisation and discrimination at every level in society can render older persons a minimally definable group warranting specific and tailored rights of protection regardless of how, or whether, defined.

V. Age Discrimination and equality

The prohibition of discrimination and the duty to eradicate it provides a starting point of analysis for the rights of older persons, building on the founding principle that “all human beings are born free

24WHO, A life course perspective of maintaining independence in older age (WHO, Geneva, 1999), p4

25The human rights of older persons: a growing challenge. Frederic Megret. [H.R.L. Rev. 2011, 11\(1\), 37-66](#)

26 A/AC.265/2006/2

27United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People under International Law, The, Kanter, Arlene S. 25 Ga. St. U. L. Rev. 527 (2008-2009)

28 Article 1, CRPD 2008: “Persons with disabilities *include* those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” (italics added).

29CDDH on Age, Meeting report, 1st meeting, Strasbourg, 23 March 2012, CDDH-AGE(2012)R1

and equal in rights and dignity.”³⁰ Age discrimination, and the stigmatisation of older people, is a challenge worldwide to the enjoyment of all rights, as it is recognised that age discrimination undermines older people’s self-esteem, dignity and human rights.³¹ It is arguable that increasing attention to the need for protection against discrimination on the grounds of age has emerged in human rights law as a reaction to the formalisation of barriers relating to age emerging, firstly, in the regulation of employment and thereafter on a piecemeal basis in other areas.³²

The core human rights instruments guarantee equality and non-discrimination³³ as do all the major regional instruments.³⁴ Article 26 of International Covenant on Civil and Political Rights (ICCPR) has been interpreted to mean state parties have a general obligation not to enact legislation with a discriminatory content, nor to apply laws in a discriminatory way.³⁵ The standards, therefore, encompass the prohibition of discrimination in law or in practice in any field regulated and protected by public authorities, whether the legislation relates to the ICCPR or the International Covenant on Economic, Social Cultural Rights (ICESCR).³⁶ In this regard complaints can be made regarding discrimination in relation to areas of particular importance to older persons, such as social security.³⁷

However, there are very few explicit references to age as an impermissible ground of discrimination in international³⁸ or regional human rights instruments³⁹, thus rendering protection against age discrimination less visible. In fact, distinctions on the basis of age have traditionally been accepted in various areas, so the case for age as a prohibited ground of discrimination might not appear to be immediately obvious for States and other actors.

The ICESCR, the ICCPR, the African Charter of Human and People’s Rights (ACHPR), the European Convention on Human Rights (ECHR), and the revised European Social Charter all contain reference to discrimination on the ground of “other status”, while the American Convention (IACHR) and the Protocol of San Salvador contains reference to “any other social condition.” It has generally been maintained that the lists of prohibited grounds of discrimination are illustrative, not exhaustive, and therefore the open ended category of “other status” may allow treaty bodies to consider age-related discrimination.⁴⁰ However, the practice of considering age as “other status” is far from consistent among human rights bodies, allows for a significantly broad margin of discretion, lacks the benefit of legal clarity and requires the argument to be specifically made on a case by case basis. Moreover, the consideration of age as “other status” for the purpose of anti-discrimination protection still raises the question of the standard of scrutiny employed to decide the claim: even if

30 Article 1, UDHR (UDHR) 1948

31 Resolution 1793 (2011): Promoting active ageing: capitalising on older people’s working potential, Parliamentary Assembly of the Council of Europe

32 Specific human rights for older persons? Paul De Hert., Mantovani Eugenio. [E.H.R.L.R. 2011, 4, 398-418](#)

33 UDHR -Articles 1,2(1) and 7, ICCPR - Articles 2,3,26, ICESCR- Articles 2(2) and 3.

34 ACHPR - Articles 2,3,18(3)-(4) and 28, IACHR, Article 1 and 24, the Arab Charter on Human Rights- Articles 2,9 and 35, The ECHR- Articles 14 and Protocol 12, The Charter of Fundamental Rights of the EU- Articles 20, 21(1) and 23

35 Broeks v. The Netherlands CCPR/C/29/D/172/1984 (9 April 1987); HRC, General Comment 18, HRI/GEN/1/Rev.9 (Vol 1) 195, para 12.

36 Human Rights Committee, FH Zwaan-de Vries v. The Netherlands, Communication No. 182/1984 (CCPR/C/29/D/182/1984)

37 Human Rights Committee, S.B v. New Zealand, (CCPR/C/50/D/475/1991) (1994)

38 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7; CRPD Article 25 (b) Article 28 (2) (b) Article 13, Article 16; CEDAW, Article 11.1 (e)

39 EU Charter of Fundamental Rights, Article 21 and the Employment Equality Directive (2007)/78/EC prohibit age discrimination but only applies in areas of competence of the EU.

40 E.g. CESCR, 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)

age might be considered “other status” in order to trigger anti-discrimination analysis, if the standard of scrutiny utilised is too deferent, distinctions on the basis of age might be easily justified. Furthermore, as age is in general not explicitly identified as a forbidden ground of discrimination, the need for positive measures to eradicate age-based discrimination might also be challenged.

International law defines discrimination as any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others, of the human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴¹ Therefore both direct discrimination as well as discrimination in outcome, or indirect discrimination are prohibited.⁴² In the European system a third form of discrimination, aside from direct and indirect discrimination can be identified as discrimination by association or by membership, which may inform the further elaboration of standards at international level. This may occur where association with a group characterised by one of the prohibited grounds, or the perception by others that an individual is part of that group, results in discrimination. An example of this might be where a person may be discriminated against in the workplace on account of being a carer for a dependent older person at home.⁴³

Once it is established that there has been a difference in treatment or outcome, it must be considered whether it can be justified based on objective and reasonable criteria to achieve a legitimate aim⁴⁴. The Human Rights Committee has stated that “a distinction related to age which is not based on reasonable and objective criteria may amount to discrimination on the ground of other status.”⁴⁵ However, as previously alluded to,, entrenched attitudes and prejudices against older persons might affect the consideration of what is deemed “reasonable”, thus potentially blurring the protection that framing age as “other status” might provide.

Further consideration must be given to the necessity for relevant statistical data in order to establish whether a measure has a discriminatory effect. UN treaty bodies often emphasise in concluding observations the need to collect and analyse relevant data disaggregated by grounds of distinction. It is arguable that, were age to be explicitly included as a prohibited ground of discrimination, States would be further encouraged to collect adequate data in relation to older persons in order to identify discriminatory measures.

The notion of “special measures of protection” and positive obligations to prevent discrimination and eliminate structural patterns of disadvantage is expressly recognised in several places in the international framework,⁴⁶ and is reinforced in many provisions at a regional level.⁴⁷ ICESCR obliges State parties to adopt measures of special protection by concentrating upon the situation of the most vulnerable and disadvantaged groups in society,⁴⁸ which includes older persons,⁴⁹ and

41 E.g. CEDAW, article 1, or the CRPD, article 2

42 Althammer v. Austria C/78/D/998/2001 (8 August 2003) para 10.2

43 E.g. Coleman v Attridge Law (2008) [C-303/06](#)

44 E.g. Gillot v. France, A/57/40 (15 July 2002) para 13.2

45 DH v. Czech Republic Human Rights Committee, Love et Al v. Australia, Communication No/ 983/2001, Schmitzde-Jong v. The Netherlands, Communication No. 855/1999, Solís v. Peru, Communication No. 1016/2001 and Althammer et al. v. Austria, Communication No. 998/2001 (available from <http://www2.ohchr.org/english/bodies/hrc>)

46 E.g. HRC, General Comment No. 4, HRI/GEN/1/Rev. 9, General Comment No. 18, n16, paras 5 & 10;

CERD, Articles 1(4) and 2(2); CEDAW, Article 4, ILO Discrimination (Employment and Occupation) Convention, Article 5

47 Article 17 of the Protocol of San Salvador, Article 18(4) ACHPR, Articles 46 & 47 Andean Charter

48 The International Covenant on Economic, Social and Cultural Rights, M. Craven, 186-88 (1995); E.g. CESCR, General Comment No. 5 E/c.12/1994/13, para.9

49 CESCR, Concluding Observations, Finland; UN. Doc. E/C.12/1/Add.8 (1996)

consequently requires State parties to take up special measures to the full extent of their available resources to protect older persons.⁵⁰ These special measures for the protection of older persons will include preparing statistical data on the economic and social situation of older persons as well as the development of special programs specifically targeting the older population.⁵¹

The CRPD requires States to affirmatively identify and eliminate obstacles and barriers to ensure access to the physical environment, transportation, information and communications, and to other facilities and services.⁵² Importantly, this standard applies to both public and private actors. This type of broad ranging provision could be seen as essential to the realization of the right to equality of all older persons, beyond those classified as having a disability in a particular context. Interestingly, the CRPD also includes in the definition of discrimination in Article 5(3), the provision of specific positive measures through appropriate steps to ensure that reasonable accommodation is provided.

Beyond formalised notions of discrimination, further consideration must also be given, to the phenomenon of “ageism” which has been characterized as the “stereotyping and prejudice against older people that can lead to age discrimination.”⁵³ Ageism can be defined as the view that “people cease to be people, cease to be the same people, or become people of a distinct and inferior kind, by virtue of having lived a specified number of years.”⁵⁴ It will include things such as neglect and negative stereotyping of the capacities of older people and situations where services or individuals providing services do not adequately serve older people through lack of appropriate design or understanding. The relative invisibility of age in the international framework fails to draw State attention to this issue.

At the regional level, as referenced above, there are a range of applicable standards, although they remain dispersed and non-comprehensive in terms of coverage, often focused on the area of employment, rather than access to goods and services. For example in Europe, the European Council Directive (2000/78/EC) establishes a general framework for equal treatment in employment and occupation which includes age among other grounds. The Directive requires all Member States to introduce legislation prohibiting direct and indirect discrimination at work based, *inter alia*, on age. It covers employment, self-employment and occupation, as well as vocational training and guidance. The Directive also anticipates, however, that “Member States may provide that difference of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labor market and vocational training objectives, and if the means of achieving the aim are appropriate and necessary.”⁵⁵ As described further below, to date, the interpretation of these provisions has permitted broad State discretion in implementation, for example, in relation to retirement ages.

A further example from Europe, which illustrates both the limitation and exploratory value in the evolution of standards is the application of Article 19 of the Treaty of the European Union 2009 and the EU Charter of Fundamental Rights, Article 21, which includes non- discrimination clauses relating

50CESCR, General Comment No. 6, The economic, social and cultural rights of older persons, E/1996/22, annex IV, para.10

51CESCR, Concluding Observations, Canada, UN. Doc E/C.12/1993/5

52 Article 9, CRPD

53 Working Paper prepared by Mrs Chinsung Chung, Human Rights Council Advisory Committee, A/HRC/AC/4/CRP.1, 4 December 2009, para 8.

54 Ageism: Concept and Definition, Johnson and Slater, Ageing and Later Life; (1993) 200

55 European Union Council Directive, 27 November 2000, 2000/78/EC.

to age. Research illustrates that older people are often discriminated against in the field of financial services by banks and insurance companies.⁵⁶ In an analogous case relating to differential insurance premiums for women and men the European Court of Justice found Member States could not derogate from the principles of gender equality based on actuarial factors or statistics.⁵⁷ The precedent set by this case may show a positive impact for older women as it will prevent them from being financially penalised in access to health care insurance, protect them from being discriminated against by employers for reasons of higher employment insurance costs, and will help achieve better gender equality. Although there is lack of EU competence to rule on age discrimination in this area, this shows a precedent for increased scrutiny of the differential treatment of older persons in the provision of such financial services.

The revised European Social Charter also provides an explicit basis for combating the various forms of discrimination which older persons may encounter in different aspects of their lives. It has been considered by the European Committee of Social Rights that many States have adopted general anti-discrimination measures related to employment but that other areas such as healthcare, education and services such as insurance and banking must also be considered.⁵⁸

Multiple discrimination such as the situation of older women

Discrimination can also be multiple, or shaped by other characteristics that may define identity, such as sex, race, ethnicity, religion, disability, nationality, health or socio-economic condition impacting on the enjoyment of all rights. This can be a particularly complex issue requiring consideration and appropriate remedy which has been referred to in reports of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) and the Committee on Economic, Social and Cultural Rights (CESCR).⁵⁹ Similarly, the Parliamentary Assembly of the Council of Europe (PACE) has expressly recognised that older migrants may face double or even triple discrimination and require specific policies which are culturally sensitive.⁶⁰

A specific, and particularly relevant, example of multiple discrimination, and the need for appropriate measures to ensure equal protection of rights, is the situation of older women. It is reported that at present women outnumber men by an estimated 66 million among those aged 60 years or over, among those aged 80 or over women are nearly twice as numerous as men and among centenarians women are between four and five times as numerous as men.⁶¹

Gender inequalities may result in both on-going and cumulative impacts which become most pronounced in old age, such as: on health; economic security, as gender-based discrimination against women in employment throughout their lives may lead to disproportionately lower incomes and pensions compared with men; adequate housing, as in many societies older women face obstacles to inheriting housing, land and property; and access to productive resources which are

56 AGE Platform Europe- <http://www.age-platform.eu/en/age-policy-work/anti-discrimination/lastestnews/1252-age->

57 Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des Ministres (C-236/09)

58 European Committee of Social Rights Conclusions 2009, Volume 1, Article 23, revised Charter

59E.g. CESCR, General Comment 20, para 17; CEDAW General Recommendation 27, CEDAW/C/2010/47/GC.1

60 Recommendation 1619 (2003) on the rights of elderly migrants, Parliamentary Assembly of Council of Europe

61 A/66/173

essential to ageing with dignity.⁶² Differences in life expectancy also mean women are more likely to be older carers for their spouses⁶³ but then rely on institutional or state supported care themselves.

The Special Rapporteur on human rights and extreme poverty has highlighted that contributory systems of social security accentuate gender inequalities with older women more likely to receive lower pensions as well as other contributory benefits.⁶⁴ The recommendation that non-contributory pensions are therefore the most efficient means of ensuring the right to social security for older women, compensating them for their years of unpaid or inadequately paid work, demonstrates how an appreciation and understanding of issues of multiple discrimination may have a bearing on evolving standards.

In recent years the CEDAW Committee has in many cases scrutinised the practices of State parties as they relate to older women with concluding observations and recommendations addressing a range of issues. Among these have included recommendations for the collection of sex disaggregated data and comprehensive statistical information on older women,⁶⁵ appropriate measures to eliminate discrimination with respect to the ownership and inheritance of land⁶⁶, gender assessments of social sector legislation and policies,⁶⁷ special attention to the needs of older rural women, ensuring their participation in decision making processes and full access to education, health services and credit facilities⁶⁸. Issues of poverty and violence against women are also closely linked to discrimination and ageism and are explored further below, highlighting the need for gender responsive approaches to the situation of older women.

The 2003 Protocol of the ACHPR on the Rights of Women in Africa⁶⁹ recognizes the vulnerability of older women and requests States to take a number of measures “commensurate with their physical, economic and social needs as well as their access to employment and professional training” and “ensure the right of elderly women to freedom from violence, including sexual abuse” in Article 22. Article 21(1) dedicates protection to the right of older widows to own property inherited from the husband. It can be seen that these provisions recognize the important connection between age and gender, minority status, marital status, health status, citizen or migrant status.

The international system has a limited ability under the current framework of protection to reflect such a necessarily nuanced recognition of inter-sectional or multiple discrimination issues as they relate to older persons, not only for women, but in relation to other grounds of identity which may result in discrimination and marginalization. The development of norms particular to the situation of older persons would facilitate such approaches to be further elaborated.

62 CEDAW, General Recommendation No. 27, CEDAW/C/2010/47/GC.1

63 OECD, Health at a Glance 2011, OECD Indicators, p170

64 A/HRC/14/31, 31 March 2010

65 CEDAW, Concluding Observations, Albania, CEDAW/C/ALB/CO/3., 16 December 2012; Panama, CEDAW/C/PAN/CO/7

66 CEDAW, Concluding Observations, Fiji, CEDAW/C/FJI/CO/4, 16 September 2012, para 35

67 CEDAW, Concluding Observations, The Netherlands, CEDAW/C/NLD/CO 5, 5 February 2010, para 45

68 CEDAW, Concluding Observations, Netherlands, CEDAW/C/ARG/CO 6, 16 August 2010, para 42

69 African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2000) CAB/LEG/66.6 entered into force 25 November 2005

VI. Violence and abuse

The abuse of older persons, preying on their particular vulnerabilities, may be physical, emotional, psychological, financial or sexual, and is often a hidden phenomenon, either at home or in institutional settings. Abuse may be wide ranging, for example, neglect may be a form of abuse, as might psychological abuse such as intimidation, humiliation or infantilisation of older persons. Financial exploitation can also take various forms such as threats to property, income or goods, including fraud, arbitrary deprivation, theft or expropriation of land, property or goods. The WHO definition of elder abuse is “a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.”⁷⁰

The legal bases on which the various forms of abuse may be protected are wide ranging at both an international and regional level, however, there is no general right conferring protective measures in relation to all forms of abuse, exploitation and marginalisation. The Secretary-General noted in 2002 that, “Advances in research and in action will not be achieved without political commitment and a solid foundation of human rights and legal support in favour of eliminating abuse of older persons.”⁷¹

Human rights mechanisms have consistently recognised older persons as being a vulnerable group requiring special measures of protection against violence and abuse. The Committee against Torture has specified that State parties should prohibit, prevent and redress torture and ill-treatment including in institutions that provide care.⁷² Similarly the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has drawn attention to the fact that older persons are highly vulnerable in detention facilities and psychiatric institutions.⁷³ The Special Rapporteur on the right to health also reported concern about unreported violence against people in care and has flagged the importance of complaints mechanisms as well as training of health workers to identify possible cases of abuse.⁷⁴ Finally, the CRPD, Article 16(1), requires “age-sensitive” assistance and support for persons with disabilities and their families to prevent exploitation, violence and abuse.

In Europe age has been found to be a relevant factor in determining whether there has been a violation of the ECHR.⁷⁵ At an international level, it may be considered whether an elaboration of what constitutes torture, cruel, inhuman or degrading treatment or punishment could explicitly include reference to age as a factor of vulnerability. Importantly also, the ECtHR also invites contemplation of other social policy tools to address the issue, recognising the range of risk factors for abuse such as living conditions, income, health status, training and respite for caregivers.

70 World Report on Violence and Health, Geneva: World Health Organisation (WHO) 2002; Krug, LL Dahlberg, JA Mercy, AB Zwi and R. Lozano (eds), p126-143.

71 Abuse of older persons: recognizing and responding to abuse of older persons in a global context Report of the Secretary-General, 9 January 2002, E/CN.5/2002/PC/2

72 CAT/C/GC/2, para 15

73 A/HRC/13/49/ Add.5 para 237.

74 A/HRC/18/37

75 E.g. *Mousiel v. France* where health, age and severe physical disability were to be taken into account in consideration of a breach of Article 3.; *Selmouni v. France* (GC), no. 25803.94, judgment of 10 July 2001, para. 100. -“it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.”

Violence against older women warrants particular attention and encompasses physical, sexual or psychological violence occurring in the family, community or perpetrated by the State.⁷⁶ Inequality and discrimination experienced by women throughout their lifetime is exacerbated in old age and may result in a limited access to basic resources for subsistence, health care, adequate housing, social services and income security, increasing the vulnerability of older women to situations of abuse such as maltreatment, neglect, and isolation. Widowhood or divorce is also a source of discrimination and violence in some contexts. In some parts of the world incidences of the torture and killing of older women, based on allegations of witchcraft or sorcery are prevalent. The CEDAW Committee has urged State parties to take immediate and effective measures to investigate the torture and killings of older women and punish perpetrators, as well as calling for legislative review and enforcement of relevant legislation related to these killings.⁷⁷ The Special Rapporteur on Violence Against Women its causes and consequences, has made proposals to adopt a holistic approach to addressing violence against older women which targets both societal transformation and the empowerment of women at every stage of their lives.⁷⁸

It is evident that any response to the issues of violence and abuse against older persons requires taking into account the multidimensional nature of the issue with age compounding other forms of discrimination based on gender, ethnic origin, religion, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds.

The Secretary-General has outlined various response mechanisms developed to address the different types of abuse of older persons, including public awareness programmes, new legislation, judicial action and intervention and prevention programmes.⁷⁹ In relation to abuse in care, specific measures include regulation of care, better identification of cases, care and treatment planning.⁸⁰ Consideration may be given as to whether, given the nature and gravity of the challenge, there would be value in such measures being articulated as legally binding obligations upon States, thereby addressing the invisibility and inadequate attention given to the phenomenon of violence against older persons and finding age-sensitive responses to the issue.

VII. Life in Dignity- an adequate standard of living for older persons

Poverty and inadequate living conditions face older people globally, with the most critical problems including homelessness, malnutrition, unattended chronic diseases, lack of access to safe drinking water or sanitation and income security.⁸¹ Insufficient income to sustain an adequate standard of living may result from a number of factors including retirement, lack of available employment, limited employment opportunities due to lack of education or training, discriminatory employment practices or lack of pension or social security grants. The Special Rapporteur on human rights and extreme poverty, recognises that while social pensions can help realise a full range of human rights, they should only be seen as one component of a broad range of social protections designed to

76 General Assembly Resolution 48/104

77 CEDAW, Concluding Observations, Papua New Guinea, CEDAW/C/PNFG/CO/3, 30 July 2010, para 28

78 A/HRC/17/26

79 E/CN.5/2002/PC/2

80Ibid.

81S A/66/173

tackle the multidimensional aspects of poverty, including measures to ensure access to basic services, such as health services and the elimination of discrimination based on sex.⁸²

The gendered nature of this discussion must also be considered. Poverty of older women has been expressed as a particular concern by the CEDAW Committee where it has recommended that State parties take appropriate measures to avoid poverty and to combat the marginalisation of older women, including immigrant and migrant women.⁸³ Poverty affecting older persons within indigenous communities may also be highlighted, as in the Inter- American Yakye Axa case, where the Court ruled that it was the duty of the State to take measures to ensure older persons' continuing functionality and autonomy, guaranteeing their right to adequate food, access to clean water and health care and the avoidance of suffering in the final stages of life. It was also noted the importance of older persons in passing down culture and traditions.⁸⁴

Both ICESCR as well as CRPD recognise the right to an adequate standard of living includes adequate food and housing and the continuous improvement of living conditions.⁸⁵ Article 28 of the CRPD focuses on ensuring equal access by persons with disabilities to adequate food, housing, clothing, housing, clean water, retirement benefits, and social protection and poverty reduction programmes, particularly designed for older persons with disabilities. This explicit right of equal access to such programmes, while applicable to older persons with disabilities, may be of interest in the development of standards for older persons more broadly.

Social protection and the right to social security

The CESCR has noted with concern the low coverage of old age pensions and the broader lack of social protections for older persons.⁸⁶ Similarly, the Special Rapporteur on human rights and extreme poverty has noted that older persons are over represented among those living in extreme poverty and that the absence of adequate legal frameworks to underpin non-contributory social security schemes seriously threatens the enjoyment of human rights.⁸⁷

Old age is generally acknowledged as one of the main “contingencies” or “branches” of social security in international law.⁸⁸ The right to social security, including social insurance and more generally the right to an adequate standard of living, is recognised throughout the international human rights framework.⁸⁹ The CESCR has stated that old age should be covered by the right to social security and that, although the Covenant does not contain specific reference to the rights of older persons, the right recognises old age benefits implicitly.⁹⁰

82 A/HRC/14/31

83 CEDAW, Concluding Observation, Iceland, A/57/38, 2002, para 250; Concluding Comments France, C/FRA/CO/6, Fortieth session 14 Jan- 1 Feb 2008

84 Indigenous Community Yakye Axa Case, Inter-Am Ct.H.R. (ser C) No. 125 at 162-4,221 (June 17 2005) (para 175).

85 ICESCR, Article 11 (1), CRPD, Article 28

86 E.g. CESCR, Consideration of Reports, Submitted by State Parties under Articles 16 and 17, Slovenia, E/C, 12/SVN/CO/1, Thirty- fifth session Geneva, 7-25 November 2005, para 22

87 A/HRC/14/31

88 ILO C 102, Social Security (Minimum Standard) Convention (1952), part V.

89 Article 9 Article 11 ICESCR, Article 22 UDHR, CEDW, Article 11 (1) (d) and (e) provide for equality and non-discrimination of women, particularly in the case of retirement, unemployment, sickness, invalidity and old age; CRPD, Article 28 (2) provides of the enjoyment of social protection non the same basis as others and for older persons with disabilities to have access to social protections and poverty reduction programmes.

90 CESCR, General Comment No. 6, The economic, social and cultural rights of older persons : 12/08/1995.para 33

The normative content of the right to social security was explored by CESCR in General Comment No.19⁹¹ where it was considered that the full implementation of the right requires a system to be available to ensure that non-contributory benefits are provided in several circumstances relevant to older persons such as old-age benefits, survivors' benefits, disability benefits and health benefits. The Committee states benefits should be adequate in both amount and duration and accessible to all without discrimination. The right includes both contributory and non-contributory benefits and both cash and in-kind benefits.⁹² This means that, within available resources, States must provide non-contributory old-age benefits to assist, at the very least, all older persons who, when reaching the retirement age, are not entitled to an old-age insurance-based pension. Furthermore, the Human Rights Committee has made clear that discrimination is prohibited in relation to the right to social security where a State has adopted such legislation.⁹³

The ILO and a number of other UN Organisations have developed a framework for policy design known as the social protection floor, anchored in the rights of everyone to social security and the right to a standard of living adequate for the health and well-being of themselves and their families.⁹⁴ This attempts to guarantee basic income security by means of basic old age and disability pensions, and universal access to essential health services, defined according to national priorities. At a minimum the ILO conventions on social security require state parties to "establish general regimes of compulsory old-age insurance."⁹⁵

Regional instruments similarly recognise the right of older persons to social security.⁹⁶ Of particular interest, in terms of a further elaboration upon international law standards, Article 18 of ACHPR conceives of social security measures as directed to the family as the social unit that accompanies the individual throughout life. Article 18 also states that "the aged and disabled shall have the right to special measures of protection in keeping with their physical or moral needs." It is explained that the special measures designed to support older persons should meet the physical and social needs of both older persons and their families, as each are seen as interdependent. In Article 29 it is stated all persons are "to respect his parents at all times, to maintain them in case of need".

The American Declaration on the Rights and Duties of Man protects the right to preservation of health and well-being and social security (Articles XI and XVI). The additional Protocol to the IACHR (Protocol of San Salvador) further protects the rights of older persons to social security in Article 9(1)⁹⁷ which provides "everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing a dignified and decent existence." Article 17 is dedicated to older persons who are entitled to receive "suitable facilities, as well as food and specialised medical care" when they lack them or are "unable to provide them for himself or herself." Article 17 also has provision aimed to empower

91 CESCR, General Comment No. 19; The right to social security; 4 February 2008, E/C.12/GC/19

92 CESCR, General Comment 6, para 30; General Comment No.19, para 4

93 Human Rights Committee, communication No. 182/1984, FH Zwaan-de Vries v. The Netherlands, 9 April 1987, CCPR/C/29/D/182/1984

94 ILO, Social Protection Floor for a Fair and Inclusive Globalisation, Report of the Advisory Group, 2011. See also the recently adopted ILO R 202, Recommendation on National Floors for Social Protection, 2012, particularly para. 5 (a), requiring national social protection floors to comprise "basic income security, at least at a nationally defined minimum, for older persons".

95 ILO Convention no. 102 concerning Social Security (minimum Standards) 1952, 201 UNTS 132; and Convention No. 128 concerning Invalidity, Old Age and Survivors Benefits 1967, 699 UNTS 185

96 E.g. Protocol of San Salvador 1988, Article 9, 6 17

97 Protocol of San Salvador 1988, Article 9

older persons by giving them the “opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires”.

The revised European Social Charter arguably contains the most detailed provisions relating to older persons and the right to social security.⁹⁸ Article 12 relates to levels of social security and the European Committee of Social Rights specifies pensions should be indexed, linked and compared to the average wage levels and cost of living, including costs of transport, medical care as well as in relation to the poverty line.⁹⁹ In addition, “the existence of a carers allowance for family members looking after an elderly relative” should be taken into account.¹⁰⁰ Article 13 and the right to social and medical assistance and Article 14 and the right to benefit from social welfare services, give further protection to those who may have a pension but are unable to cover the costs of care. In this regard the Committee’s objective is for adequate incomes to enable older persons to participate in society and not be excluded by poverty.

Although the ECHR is generally civil and political in nature and does not recognise social rights, in certain circumstances the right property protects allowances or pension benefits under Article 1 Protocol 1 together with Article 14 and the right not to be subject to discrimination. In several cases the ECtHR has held that once conditions of eligibility are fulfilled and individuals have an assertable right to a benefit this amounts to invoking protection of the right to property and there should not be discrimination without objective and reasonable justification.¹⁰¹ There are also limited guarantees regarding the level of social security provided but the ECtHR has taken a restricted approach to its applicability. In the case of *Larioshina v. Russia*¹⁰² an applicant argued that her pension was too low for her to live with dignity but the court found there was no causal link between the level of pension and damage to her mental health capable of attaining the minimum level of severity falling within the ambit of Article 3 of the Convention. The provisions of the ECHR are thus narrowly formulated and it has been argued that it “does not always make it possible to deal with ill-treatment of older persons satisfactorily.”¹⁰³

The Special Rapporteur has recommended that States must recognize the right to social security in domestic law and social pension schemes must progressively ensure social security for all. She recommends that human rights principles and standards are integrated throughout the design, implementation and evaluation of social pensions. This includes considerations of non-discrimination, including the adoption of specific measures to ensure access, transparency, access to information, accountability, participation, coordination among social security and health care policies and attention to the needs of older women.¹⁰⁴ The value in transposing these recommendations into legally binding obligations on States in order to advance understanding of the right to social security for older persons must be considered, drawing on the precedent of some of the regional standards as outlined above.

98 Revised European Social Charter, Articles 12,13,14 and 23

99 The Rights of Elderly Persons under the European Social Charter, Draft Information Document drawn up by the Secretariat of the Council of Europe, Department of the European Social Charter, March- April 2011

100 European Committee on Social Rights, Conclusions on France (2003), 0186, Digest of Case Law of ECSR 2008, p149

101 E.g. *Gaygusuz v. Austria* (1997) 23 E.H.R.R.; *Wessels- Bergervoet v. Netherlands* (2004) 38 E.H.R.R. 37, *Stec v. UK* (2006) 43 E.H.R.R. 47

102 *Larioshina v. Russia* (2002) 35 E.H.R.R. CD36

103 Commissioner for Human Rights, 2nd Annual Report April 2001 to December 2001 to the Committee of Ministers and the Parliamentary Assembly, Comm. DH (2002) 2, p 119-131

104 A/HRC/14/31

Right to work

The right to work¹⁰⁵ is essential for the realization of other human rights and is inherent to human dignity. However, it is reported that societies often devalue older workers as less productive, more prone to ill health or disease, incapable of learning or adapting to technological environments. Direct and indirect discrimination in employment is pervasive despite varying levels of national and regional laws of protection. The issue of mandatory retirement ages has also been pointed out as problematic from a human rights perspective and requiring further exploration.¹⁰⁶

The CESCR has urged States to take measures to prevent discrimination on the grounds of age in employment and occupation and to develop retirement programmes¹⁰⁷, stressing the need for appropriate retirement ages to be established by States.¹⁰⁸ The Committee has also encouraged the employment of older workers in circumstances which make best use of their experience and know-how and prepare workers for retirement.¹⁰⁹ The CEDAW Committee has likewise highlighted the importance of paid work for older women.

There are a number of International Labour Organisation (ILO) recommendations which address the situation of older workers and call on members to take measures to prevent discrimination in employment and occupation. The recommendations underline that older workers should enjoy equality of opportunity and treatment in relation to all aspects of work and conditions of employment in all sectors. It is also explicit that age should not constitute a valid reason for termination of employment.¹¹⁰

The European Council Directive 2000/78/EC addresses areas of employment discrimination, including age, which can be justified by a legitimate aim, if the means of achieving that aim are appropriate, necessary and proportionate. The European Court of Justice has considered a number of cases on the basis of age discrimination, where it has generally been found to be permissible and justifiable under national policy to impose mandatory retirement ages in order to facilitate the employment of younger workers, where workers would be eligible for retirement pensions.¹¹¹

Recommendations of the PACE are informative in regard of developing standards as they recognise the importance of flexible working arrangements for older workers, enabling them to move to less demanding jobs and opting for part-time work, teamwork, job sharing, task rotation and redefinition of tasks between team members as well as the facilitation of phased retirement and encouraging initiatives such as voluntary or community work to ease transition. There is also a recognised need to develop new approaches to supporting older persons as unpaid carers.¹¹²

105 Article 23 of the Universal Declaration of Human Rights, Article 6 and 7 ICESCR, Article 5(e)(i) CERD, Article 111(1)(a) to (d) CEDAW

106CESCR, General Comment No. 6, The economic, social and cultural rights of older persons, E/1996/22, annex IV

107CESCR, General Comment 6, paras 22-25

108 CESCR, General Comment 19, para 15

109 CESCR, General Comment 6, paras 22-25

110 ILO, R131, Invalidation, Old-Age and Survivor's Benefits Recommendation, 1967; R162 Older Workers Recommendation, 1980; and R166 Termination of Employment Recommendation, 1982

111 Case C-341/08, *Domnica Petersen v Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe*, 2010; Case C-388/07, *The Queen on the application of: The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform*, 2009; Case 0411/05, *Félix Palacios de la Villa v Cortefiel Servicios SA*, 2007

112Resolution 1793 (2011): Promoting active ageing: capitalising on older people's working potential, Parliamentary Assembly of the Council of Europe, para 6.3

The notion of “reasonable accommodation” contained in CRPD¹¹³ may also be instructive in addressing the challenges faced by older persons in overcoming both social and physical barriers that prevent full and effective enjoyment of the right to work on an equal basis as others. Such a provision calls on States to require mechanisms of monitoring and enforcing the adoption of “least restrictive measures” to accommodate diversities and capabilities.

Education, training and life-long learning

Intrinsically linked to the right to work is the right to education, including training and lifelong learning.¹¹⁴ While the right to education is recognised by the international framework, explicit provisions have related to children, women and persons with disabilities¹¹⁵ but there are limited detailed provisions or orientation, beyond the general scope of the right, related to older persons.

The CESCR has emphasised the right of older persons to benefit from educational programmes and the need to make the know-how and experience of older persons available to younger generations.¹¹⁶ CESCR has stated that older persons should have access to suitable education programmes and training throughout their lives.¹¹⁷ The Committee also recalled the United Nations Educational, Scientific and Cultural Organization (UNESCO) concept of life-long education, which includes informal, community based and recreation-oriented programmes for older persons in order to develop their sense of self-reliance and the community’s sense of responsibility.

Further specificity of the right to education for older persons could include measures such as adopting a life-course approach and taking preventive measures aimed at enhancing the employability of the workforce as it ages, such as occupational health-care measures and re-skilling programmes at mid-career. Recommendations include raising awareness among the younger generation of the importance of lifelong learning and encouraging young adults to prepare for old age in their health, training, and social and financial practices as well as tapping into the potential of information and communication technologies to open up employment and training possibilities for older people, including those with disabilities.¹¹⁸

Adequate food

The right to adequate food is the right to have alone, or in community with others, physical and economic access at all times to adequate food or the means for its procurement.¹¹⁹ There are many factors which may uniquely undermine older person’s enjoyment of the right to food but there is little analysis of this by human rights bodies.¹²⁰ It is considered that older persons may be at risk of losing access to resources, for example, as a result of discrimination, or where policies or practices place age limitations on work, property, rent or tenure of land. Older persons may also be placed

113 CRPD, Article 27

114 ICESCR, Article 13

115 CRC 1989, Article 28, CEDAW 1978, Article 10, CRPD 2006, Article 24(2)

116 CESCR, Report on the Twelfth and Thirteenth Sessions, 12 December 1996, E/1996/22, annex IV, paras 36 and 37

117 CESCR, General Comment No. 6, para 37

118 Resolution 1793 (2011): Promoting active ageing: capitalising on older people’s working potential, Parliamentary Assembly of the Council of Europe, para 6.4

119 CESCR, General Comment No. 12 (E/C.12/1999/5, para 6

120 In a few cases older persons have been listed among other groups as being at risk of experiencing food insecurity, e.g. CESCR, Concluding Observations for Mongolia E/C.12/1/ADD.47), Democratic People’s Republic of Korea (E/C.12/1/ADD.95, and Israel (E/C.12/ISR/CO/3)

under a burden to provide for child or grandchild dependents or may require support for procuring, accessing and preparing food adequate for their nutrition. It is important that States safeguard this right for older people, for example, by ensuring that pensions are indexed to food and fuel prices. Older persons may additionally face barriers to access to food in emergency situations where there is lack of data on older persons and older housebound people are overlooked and may be unable to access aid. There has been limited attention given by the international community to such age-specific issues as they relate to the right to adequate food.

Right to adequate housing

Affordability, accessibility, adequacy and legal security of tenure are just a few of the issues affecting older people's enjoyment of the right to adequate housing, enshrined in Article 25 of the UDHR and Article 11 of ICESCR.¹²¹

The UN Special Rapporteur on adequate housing has warned that older persons are vulnerable to forced evictions preceding urban beautification or gentrification plans.¹²² Furthermore, the former Special Rapporteur stated that, "priority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities...Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalised sectors of society."¹²³ The ILO in its recommendation no. 162 on older workers also reminds States of their duty to eliminate discrimination in access to housing.¹²⁴

The availability of appropriate housing adapted to the needs of older persons is also of concern as physical and architectural barriers in housing can particularly affect older persons. The CESCR has noted that "national policies should help older people to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaption to the ability of those persons to gain access to and use them."¹²⁵

The CESCR has also consistently identified accessibility as a key component of the normative content of the rights contained in the Covenant, and has recommended to State parties that accessibility should be ensured in order to allow the full exercise of all rights by older persons.¹²⁶ The CRPD deals with housing as part of the right to accessibility under Article 9(a). The development of the systematic inclusion of specific accessibility criteria and design in housing and other buildings could assist older persons in the enjoyment of their rights, including the right to adequate housing.

Furthermore, tangentially linked to the right to adequate housing and to the realization of other human rights, is the concept of "universal design" contained in CRPD, which is the "design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaption or specialized design."¹²⁷ This concept, which contains State

121CESCR, General Comment No. 4, The right to adequate housing (article 11 (1) of the Covenant), E/1992/23

122 A/HRC/10/7/Add.2, para 28, Also, General Recommendation No.6 para 33 and General Comment No.7 on Forced Eviction

123 A/HRC/4/18, Annex 1, paras 31 and 33

124 ILO, Older Workers Recommendation (162), 1980, Section II, para 5(g): "older workers must enjoy equality of opportunity and treatment with other workers without age discrimination, including access to housing."

125CESCR, General Comment No. 6

126 CESCR, General Comment No. 4, The right to adequate housing, para 8; General Comment no. 12, The right to adequate food, para 13, General Comment No. 14, The right to the highest attainable standard of health, para 12 (b); General Comment 15, The right to water, para 12(c) (i); General Comment No.21, Right of everyone to participate in cultural life, E/C.12/GC/21, 21 December 2009, para 16(b).

127 CRPD, Article 2, final paragraph and also referred to in the Council of Europe Disability Action Plan 2006-15

obligations regarding promotion and availability, can therefore apply to housing as well as other goods, services, facilities and equipment and has the potential for elaboration in relation to all older persons.

At a regional level the IACHR protects the right to housing through the right to own property, and has been invoked in cases concerning forced displacement and indigenous peoples' ancestral territories. The ACHPR gives protection to the right through the right to property, the right to health and the right to a general satisfactory environment favourable to development. The ECtHR has also afforded some protection to the rights of older persons to housing and special measures of protection in a range of cases where it was held that because tenants were old and had low income that they were entitled to special protection.¹²⁸ The revised European Social Charter explicitly recognizes the right to adequate housing, including the provision of appropriate housing.¹²⁹ These provisions of the European Social Charter make it necessary to enable older persons to adapt their housing to their needs or alternatively, to enable them to buy new housing which meets their needs. A 2009 Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing urged for the needs of older persons to be taken into account in national or local housing policies and that the supply of adequate and appropriate housing for older persons must be sufficient.¹³⁰

While there has been a recognition, both at a regional and international level, of the potential vulnerabilities of older persons to fully realise their right to adequate housing there are limited legally binding standards specifying the affordability, accessibility, adequacy and legal security of tenure standards that would prove helpful in ensuring the realization of the right.

VIII. Legal capacity and equal recognition before the law

Many countries are reported to have reformed legal capacity and guardianship laws over the past 20 years to shift from a "medical model which focuses only on a diagnosis of "incapacity" to a model that seeks to assess the individuals' functional abilities."¹³¹ Nevertheless, concerns are often expressed that older persons deemed not to be capable of taking care of their own welfare are unnecessarily stripped of their legal capacity by guardianship measures which remove their ability to make decisions about aspects of their lives.¹³²

In circumstances where an older person is partially or completely unable to look after their own interests because of a mental condition, such as dementia, or an extreme state of physical frailty there may be a need for supported decision making, which as a last resort, where an individual has no capacity to express his or her will or preferences, may amount in practice to substitute decision making. While the CRPD deals with this issue, there has been limited exploration of these issues in

128 Spadea & Scalabrino v. Italy, 21 Eur.HR.Rep. 482 (1995); A.O. v. Italy, App. No. 22534/93, 29 Eur.H.R Rep. CD 92, (2000)

129 Article 23; Article 31 calls for "Parties undertake to take measures designed: 1. to promote access to housing of an adequate standard; 2. to prevent and reduce homelessness with a view to its gradual elimination; 3. to make the price of housing accessible to those without adequate resources."

130 Council of Europe Commissioner for Human Rights, Recommendations of the Commissioner for Human Rights on the Implementation of the right to housing CommDH (2009)5

131 United Nations Convention on the Rights of Persons with Disabilities and its implications for the Rights of Elderly People under International Law, The, Kanter, Arlene S. 25 Ga. St. U. L. Rev. 527 (2008-2009)

132 E.g. See reports of the Mental Disability Advocacy Centre- <http://www.mdac.info/en>

international law as they relate directly to older persons experiencing physical and mental decline, for example, in express provisions relating to advanced directives or statements.

The key provisions in international law related to legal capacity and decision making on an equal basis to others are defined in CRPD. Article 12 provides a State obligation to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” and to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity” while Article 17 provides that “every person with disabilities has a right to respect for his or her physical and mental integrity.” These protections have created a shift towards supported decision making, as an alternative to guardianship, emphasising the autonomy and independence of the individual rather than their dependence and inabilities. As these provisions relate only to persons with disabilities, however, older persons with no disability, who retain mental capacity for decision making, may not always be identified to benefit from appropriate measures of supported decision making where required and could ultimately suffer denial of their right to exercise capacity on the basis of age.

Concerns may also arise where older people are denied the time, opportunity or support to give their free, prior and informed consent to their choice of treatment, services and care, particularly in situations of dependency, end-of-life decisions and in the various daily life situations of long term care. The Special Rapporteur on the right to the highest attainable standard of physical and mental health has drawn attention to this issue, recognising that the persistent denial of the right to informed consent could constitute a form of physical and psychological abuse of older persons and that it is therefore important to establish safeguards to ensure the informed consent of older persons in the context of guardianship and build the capacity of older persons to fully understand and make use of health information.¹³³

Article 7 of the ICCPR contains a prohibition against torture and cruel punishment as well as a prohibition on performing medical or scientific experiments on persons without their free consent. In relation to medical interventions or treatment, the former Special Rapporteur on the right to health made clear that legal capacity is presumed in adult persons and gives them the right to consent to, refuse or choose an alternative medical intervention.¹³⁴ Further, in the view of the Special Rapporteur, it is only in a life-threatening emergency in which there is no disagreement regarding absence of legal capacity that a health-care provider may proceed without informed consent to perform a life-saving procedure.¹³⁵ There appears, however, to be limited explicit elaboration of normative standards in international law to deal with issues of legal capacity and consent, despite its importance to the dignity and autonomy of older persons.

Several cases of the ECtHR have dealt with issues of capacity and consent in further detail, although not specifically in relation to older persons, confirming that autonomy and decision making are integral to the right to a private, home and family life¹³⁶ and that any interference with capacity, such as a finding of full or partial guardianship order,¹³⁷ or non-consensual medical treatment,¹³⁸ is

133 A/HRC/18/37, para.65

134 A/64/272, para 10.

135 Ibid, para 12.

136 *Evans v. UK*, Grand Chamber (application 6339/05) judgment of 10 April 2007, para 71; citing *Pretty v. UK* (2002) 35 EHRR1, para 61.

137 *Shtukaturvov v. Russia* (application No. 4409/05), 27 March 2008

138 *Y.F. v. Turkey* (application no. 24209/94), 22 July 2003, para 33.

an interference with the right to private and family life and must be based on law, pursue a legitimate aim and be a proportionate means of achieving that aim. Furthermore, individuals have a right to a fair hearing, including the right to participate in decisions and of access to a court to challenge decisions, in relation to a determination of their legal capacity.¹³⁹ Further detailed standards are also set out in the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine)¹⁴⁰ which may inform the elaboration of international norms.

IX. Health and social care

Right to health and end of life care

While it is essential that older persons are not characterised as frail and dependent, the right to health will nevertheless often be of particular importance to older persons as chronic illness as well as physical, mental, intellectual or sensory impairments increase in prevalence in older age.¹⁴¹ Sufficient resources and facilities, such as residential care services, home-care programmes or geriatric services may be essential to meet the needs of older people, yet the Secretary-General reports that older people are over looked and de-prioritized in health policies, programmes and resource allocations and States often lack sufficient services to meet increasing demands. States face challenges in relation to a lack of comprehensive health policies, including the prevention, rehabilitation and care of the terminally ill, strategies on healthy and active ageing and a lack of legal frameworks to monitor human rights violations in care facilities or an absence of provisions for palliative care to allow people to live, and ultimately die with dignity.¹⁴²

The international human rights framework contains a number of protections of the right to the highest attainable standard of physical and mental health¹⁴³ requiring health facilities, goods and services to be made available, accessible, affordable, acceptable and be of good quality for older persons without discrimination. The Special Rapporteur on the right to health has flagged that the availability of health services, goods and facilities has implications for the allocation and prioritization of resources for older persons, in particular in relation to chronic rather than acute conditions, such as dementia.¹⁴⁴ It has been highlighted that the accessibility and the appropriateness of primary health care services facilities and goods for older persons can be hindered by physical, financial and discriminatory barriers, including limited access to health related information.¹⁴⁵

General Comment No. 14 of CESCR adds further specificity to the standards by affirming the importance of an integrated approach, combining elements of preventative, curative and rehabilitative health treatment based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older

139 Salontaji-Drobnjak v. Serbia, (Application no. 36500/05), 13 October 2009

140 See Articles 5 & 7. See also Council of Europe Recommendation R(99)4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults (adopted on 23 February 1999) ("Recommendation R(99)4")

141 WHO and World Bank "World Report on Disability" 2011

142 A/66/173

143 ICESCR, Article 12, CEDAW Article 12; CRPD, Article 25 (b); ICCPR, Article 7

144 It is estimated that 35.6 million people lived with dementia worldwide in 2010 which will increase to 65.7 million by 2030 and to 115.4 million in 2050- Alzheimer's Disease International, World Alzheimer Report 2010: The Global Economic Impact of Dementia

145 A/HRC/18/37

persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity¹⁴⁶.

The CRPD articulates the right to health in five principles dealing with equality of treatment, personalisation of care, proximity to people's own communities, health care professional's responsibilities and obligations and non-discrimination.¹⁴⁷ Together with Article 26 of CRPD relating to habilitation and rehabilitation, these provisions seek to bring people with disabilities into mainstream health services. It must be considered whether such provisions have value for all older persons, not only those with disabilities.

Several regional standards are also informative in advancing understanding of targeted protections of the right to health of older persons. The ACHPR, IACHR, EU Charter of Fundamental Rights and European Social Charter recognise the right to health,¹⁴⁸ although only the European Social Charter is specific about the rights of older persons within the right to health framework. Article 23 of the revised European Social Charter read together with Article 11, requires the provision of programmes and services specifically aimed at older persons, in particular, nursing and health care in people's own homes. It also requires mental health programmes for any psychological problems in respect of the older person, adequate palliative care services and measures designed to promote health, for instance, prevention and awareness-raising.

The PACE has drawn attention to the need to improve healthcare systems and make them accessible to all older persons, ensuring they receive appropriate medical care with specific attention to their nutritional needs; establish decent palliative and end-of-life care services for older persons; provide special training for individuals caring for older persons at home and for medical practitioners; adapt the existing structures for the provision of healthcare and assistance to older persons in order to make them culturally appropriate to the needs of older migrants.¹⁴⁹

While the broadly articulated international standards as outlined above are cognisant of the importance of the right to health to the situation of many older persons, it is questionable whether they set out binding standards and agreed norms with the degree of specificity that is required for the purposes of implementation, for example as set out in the European Social Charter, for the full protection and realization of their rights..

Palliative and end-of-life care

There has been relatively limited exploration of end-of-life and palliative care issues by the human rights framework at either an international or regional level¹⁵⁰, despite its central importance to the lived experience of older persons.

146 CESCR; General Comment no. 6 paras 34 and 35

147 Article 25, CRPD

148 Protocol of San Salvador 1988 (Article 10), the ACHPR 1981 (Article 16), the European Social Charter (Article 11, 23) and the EU Charter of Fundamental Rights 2000 (Article 35). While the European Convention on Human Rights does not explicitly include the right to health, several cases have raised right to health issues relating to resource allocation in health care systems (Osman v. UK (2000) 29 E.H.R.R.; Scialacqua v. Italy (1998) 26 E.H.R.R. CD164), the right to die (Pretty v. UK (2002) 35 E.H.R.R. 1.), or mental health care. (Wintwerpen v. Netherlands (1992) 15 E.H.R.R. 437; Aerts v. Belgium (2000) 29 E.H.R.R. 50)

149 Recommendation 1796 (2007): The situation of elderly persons in Europe, Parliamentary Assembly of Europe, para 11.4

150 E.g. Recommendation 1418 (1999) 1 of the Parliamentary Assembly of the Council of Europe recognises the problem of insufficient access to palliative care and good pain management.

Palliative health care, the purpose of which is not to cure a patient but to relieve a patient from pain and suffering, may be required in order to allow older people, nearing the end of their lives to live and die with dignity. The World Health Organisation (WHO) defines palliative care as “The active, total care of patients whose disease is not responsive to curative treatment. Control of pain, of other symptoms and of psychological, social and spiritual problems is paramount. The goal of palliative care is the achievement of the best quality of life for patients and their families”.

Despite the existence of inexpensive and effective pain relief medicines, it is reported that tens of millions of people around the world suffer from moderate to severe pain each year without treatment¹⁵¹ and that the advanced integration of palliative care with wider health services has only been achieved in 20 countries globally (8.5%).¹⁵²

General Comment No. 14 of CESCR states measures should be taken to ensure attention and care for those who are chronically and terminally ill, sparing them avoidable pain and allowing them to die with dignity. The minimum core content of the right to health, includes the adoption of a national public health strategy addressing the needs of the entire population, the provision of essential medicines and the education of health workers. While this may broadly serve to address the issue, in practice there is often a focus on preventive and curative care and the standards are not sufficiently coherent or implemented with regard to palliative care.

The Special Rapporteur on the right to health has pointed out that, as a core obligation under the ICESCR, State parties should ensure the provision of essential drugs defined under the WHO Action Programme on Essential Drugs. However, despite this, inexpensive and obtainable oral morphine and other narcotics are often limited in supply for essential palliative care. It is also pointed out that limiting equal access of all persons to palliative care on the basis of age cannot be considered appropriate and may amount to discrimination on the basis of age.¹⁵³

The issue of euthanasia is more often formulated by reference to criminal law or medical ethics than human rights. It is considered that the right to life can be understood as standing both against and in support, on the basis of autonomy, of euthanasia.¹⁵⁴ Nevertheless, at a minimum, human rights protections could provide for significant safeguards to regulate the end of life and personal decision making. The Special Rapporteur on the right to health has stated that in respect of end of life it is necessary, “to ensure that patients be able to make autonomous, informed decisions regarding the quality of health during the process of dying.” This “includes choices about access to adequate pain relief and other necessary interventions, location of death, and the ability to refuse treatment designed to prolong life when it is not desired by the patient.”¹⁵⁵

At a regional level, the most detailed standards on end of life issues can be found in a Recommendation of PACE setting out a series of recommendations to Council of Europe Member States regarding the protection of the human rights and dignity of the terminally ill and the dying, including, *inter alia*, by recognizing and protecting a terminally ill or dying person’s right to comprehensive palliative care, by protecting the terminally ill or dying person’s right to self-

151 Human Rights Watch; “Please, do not make us suffer any more...” Access to Pain Treatment as a Human Right, March 2009; Access to pain treatment as a human right. Lohman et al.: BMC Medicine 2010 8:8.

152 World Palliative Care Alliance, Mapping levels of palliative care development: A global update 2011

153 A/HRC/18/37

154 The human rights of older persons: a growing challenge. Frederic Megret. [H.R.L. Rev. 2011, 11\(1\), 37-66](#)

155 A/HRC/18/37

determination and by upholding the prohibition against intentionally taking the life of terminally ill or dying persons.¹⁵⁶

The limited exploration of end of life issues and the rights at stake under the international framework of protection requires to be addressed in a progressive manner to ensure the rights of everyone, and in particular older persons are respected, protected and fulfilled at the end of life.

Long-term care

Long-term care is defined by the Organisation for Economic Cooperation and Development (OECD) as, “a range of services for people who depend on ongoing help with activities of daily living caused by chronic conditions of physical or mental disability.”¹⁵⁷ Whether institutional or home based, long term care and the dependency and vulnerability of older persons using such services, raises a range of distinct human rights challenges. These may include the right to liberty and security and restrictions on freedom of movement, freedom from abuse and other cruel, inhuman and degrading treatment, the right to personal integrity, the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, including issues around health care costs, the rationing of treatment and quality control and the right to participate in decision making, for example, in relation to capacity issues and compulsory placement in care institutions.¹⁵⁸

While statistics vary it is generally found that at the ability and capacity of the family to care for older family members who require care is under strain as fertility rates decline, adult children are lost to disease such as HIV /AIDS, younger family migrate and women seek employment.¹⁵⁹ The Special Rapporteur on the right to health has noted that while formalized care is prevalent in developed countries, that in the developing world changing social dynamics mean that families play a steadily less prominent role while government institutions and medical professionals are assuming a bigger role in care-giving”.¹⁶⁰ Many developing countries are therefore seeing a rapid growth of residential care homes for older people which in the main are small-scale, informal and entirely unregulated.¹⁶¹ A further challenge in the realization of these rights lies in the fact that long term care is often decentralized with responsibilities lying between national and local government and the private and voluntary sectors. While there is a clear general State duty to protect against abuses of third parties this is poorly articulated or applied by States. These issues raise serious concerns about the realization of older people’s rights in long term care settings.

There are a range of general provisions applicable in international law to the situation of older persons using care services, but they remain poorly articulated and seldom directly considered in their application. Key treaty body recommendations include CESCR General Comment No. 6, which encourages States to support, protect and strengthen the family, provide financial support and services including, for those who live at home, transportation, food delivery, nursing care and doctor

156 PACE Recommendation 1418 (1999) Protection of the human rights and dignity of the terminally ill and the dying

157 OECD, Long –term Care for Older People OECD, Paris, 2005, p3

158 E.g. Issues raised in Seminar on protection of human rights and the special situation of elderly people in retirement homes or institutions: Background paper and conclusions, 21-23 October 2001, Neuchatel, Switzerland; See also P.Lloyd-Sherlock and N.Redondo (2010) “Institutional care for older people in developing countries: Repressing rights or promoting autonomy? The case of Buenos Aires, Argentina”, Dev Research Briefing , February 2011

159 United Nations Division for the Advancement of Women, Gender Dimensions of Ageing (2000) Women 2000 at p5

160 A/HRC/18/37

161 P. Lloyd-Sherlock and N. Redondo (2010) “Institutional care for older people in developing countries: Repressing rights or promoting autonomy? The case of Buenos Aires, Argentina”, Dev Research Briefing , February 2011

visits. General Comment 14 reiterates the need for preventative, curative and rehabilitative measures. CEDAW General Recommendation No. 27 makes clear States should adopt a comprehensive healthcare policy aimed at protecting the healthcare needs of older women including long-term care, interventions promoting behavioural and lifestyle changes to delay the onset of health problems, such as healthy nutritional practices and an active lifestyle. A range of other general protections will also be of relevance¹⁶² but have not been contextualised within the context of long term care. However, the text of existing human rights instruments and the scattered non-binding recommendations fail to identify long-term care as a necessary social service for older persons, or to encompass all relevant aspects of long-term care in a clear and consistent manner.

Home-based care

There is generally a recognition, albeit disparate in nature, that living arrangements, either at home, in supported accommodation or in residential placements, should take account of an individual's wishes and that, so far as possible, support services should be provided in a person's home or community environment, rather than in a residential institution.¹⁶³ This recognition is echoed at a regional level.¹⁶⁴ CESCR has noted that national policies should help older persons to continue to live at home and ensure their social integration, facilitating mobility and communication through the provision of adequate means of transport.¹⁶⁵ This accords with the concept of independent living enshrined in CRPD, Article 19, which relates to the rights of people with disabilities to live independently and in the community and therefore avoid unnecessary institutionalization.

The provision of home-based care can support the right to an adequate standard of living which provides for adequate food, clothing and housing and the progressive goal of the continuous improvement of living conditions which arguably must take into the account the specific circumstances faced by older people.¹⁶⁶ The CESCR has made recommendations to State parties to extend the network of integrated health and social care services, including home help, for older persons with physical and mental disabilities.¹⁶⁷ It has also recommended allocation of sufficient funds and strengthening the role of non-profit organisations in the provision of home care and other social services.¹⁶⁸ Beyond this however, despite the clear relevance of many of the existing standards of human rights protection at an international level to the provision of home- based care, there has been limited attention paid to it by human rights bodies.

The European Committee on Social Rights, under the revised European Social Charter, has explored more detailed requirements, for example the provision of information about services and facilities including day-care centres, services for repair jobs and domestic work, preparation of meals and

162 E.g. including, *inter alia*, ICCPR, Article 6, right to life; ICCPR, Article 9, right to liberty and security of person; ICESCR, Article 19, right to freedom of expression and information; ICESCR, Article 12 and right to an adequate standards of living, CRPD, Article 19 right to live independently in the community.

163 E.g. The Madrid International Plan of Action on Ageing encourages the establishment of social services to support families when there are elderly people at home and to implement special measures especially for low-income families Recommendation CM/Rec(2009)6 of the Committee of Ministers to Member States on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society

164 ECSR, Conclusions 2003, Slovenia, p. 530; Conclusions 2005, France, p. 252-253.

165 CESCR, Report on the Twelfth and Thirteenth Sessions, 12 December 1996, E/1996/22, annex IV

166 Article 25(1) of the UDHR and ICESCR Article 11

167 CESCR, Consideration of Reports, Submitted by State Parties under Articles 16 and 17, Slovenia, E/C, 12/SVN/CO/1, Thirty- fifth session Geneva, 7-25 November 2005, para 35

168 CESCR, Consideration of Reports, Submitted by State Parties under Articles 16 and 17, Concluding Observations of the CESCR, Serbia and Montenegro, E/C.12/1/Add.108, Thirty-fourth session 25 April-13 May 2005, para 8.

nursing care, etc, all with a relatively low cost to allow the broadest possible access.¹⁶⁹ Such elaborated standards do not appear at an international level however, demonstrating an inadequacy of standards of protection.

It should also be noted that home-based care is often dependent upon networks of care provided privately by spouses, relatives or friends or informal carers. There is no explicit provision in international human rights law on the right to be assisted, nor the right to be supported as a carer, although there is protection of the right to family as part of the right to private life in Article 17 of the ICCPR and Article 10 of the ICESCR. Similarly CRPD asserts in its preamble that protection and assistance of persons with disabilities and their family members is necessary to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities¹⁷⁰ but this is applicable only in the context of the treaty. The African and Asian legal traditions contain more explicit protection of the family as a unit of care for older persons. The ACHPR sets out an individual duty “to preserve the harmonious development of the family and to work for the cohesion and respect of the family.”¹⁷¹ While the Arab Charter on Human Rights 1994 calls on States to provide care and special protection for the family, mothers, children and the aged.¹⁷² The Confucian legal tradition, under the relationship of filial duty, gives parents a claim to be cared for by their children and places obligations on governments to provide the social and economic conditions that facilitate the realization of this right.¹⁷³ It has been argued, however, that such familial responsibility clauses are problematic to enforce in practice.¹⁷⁴

Compulsory institutionalization

Older persons are particularly vulnerable to hospitalization and institutionalization on account of disability, age or both. This may be of concern where it deprives individuals of their independence and autonomy without their consent or appropriate safeguards.

It is clear that all people are afforded protection from deprivations of liberty by Article 9(1) of the ICCPR and that a court may determine the legality of detentions. State parties must also ensure that an effective remedy is provided in cases in which an individual successfully claims to be deprived of his liberty in violation of the Covenant.¹⁷⁵ Furthermore, by reference to Article 14 of CRPD, the Committee on the Rights of Persons with Disabilities (CRPD Committee) has recommended the revision of laws that allow for the deprivation of liberty on the basis of disability and has called for the repeal of provisions that authorize involuntary internment linked to a disability while recommending measures are adopted to ensure health and mental health services are based on the informed consent of the person concerned.¹⁷⁶ Such considerations are also relevant and could be

169 European Committee of Social Rights Conclusions 2009, including Malta, Netherlands, Portugal

170 Also Article 23 CRPD

171 ACHPR, Article 29.

172 Arab Charter 1990 Article 38.

173 East Asian countries such as China, Japan and Singapore have transposed this into law while countries such as Korea and Hong Kong have adopted indirect methods of supporting care for older persons within the family. Specific human rights for older persons? Paul De Hert, Mantovani Eugenio. *E.H.R.L.R.* 2011, 4, 398-418; Declaration of the Basic Duties of ASEAN peoples and governments (1983), Article 5(6)(a), para.12 “to assist the aged to lead as normal a life as possible, consistent with their age, as integrated members of their family of community.”

174 Expert Group Meeting on Human Rights of Older Persons, May 2012- <http://social.un.org/ageing-working-group/egm2012.shtml>

175 HRC, General Comment No. 08: Right to liberty and security of persons (Art. 9) : 30/06/1982

176 CRPD Committee, Concluding Observations, Spain, (CRPD/C/ESP/CO/1, para 35) 19 October 2011

further elaborated to cover the situation of all older persons, who should be protected from institutionalization on the basis of age and ageism as well as disability.

The ECtHR has considered in a number of cases whether institutionalization has violated Article 5 of the ECHR, and the right to liberty. In the case of *H.M v. Switzerland*¹⁷⁷ the Court was of the view that placing an applicant in a nursing home was in the individual's own interests in order to provide the necessary medical care, living conditions and standards of hygiene and was therefore a responsible measure taken by the competent authorities.¹⁷⁸ The ECtHR also took into consideration that the applicant was not placed in a secured ward, retained freedom of movement and was able to maintain social contacts.¹⁷⁹ In the more recent case of *Stanev v. Bulgaria*¹⁸⁰ however, the ECtHR confirmed that long-term institutionalization constituted a form of deprivation of liberty violating the right to liberty, and that that the applicant must be granted direct access to courts to have the measure of his legal incapacity reviewed. These cases are illustrative of the ECtHR approach to these issues and the safeguards and balance that requires to be struck in such decisions.

Safeguards in international law regarding the forced institutionalization of all older persons have been criticized as inadequate and an assessment of the normative gaps in protection makes a compelling case for careful consideration to be given to developing further measures of protection.

Minimum standards, violence and abuse in institutionalised care

A number of concerns frequently arise relating to the standards of residential or institutionalized care for older persons. These include the use of restraints, the maintenance of family relationships and contact with friends and spiritual advisors,¹⁸¹ issues of privacy, liberty, participation in decision making, nutrition and personal care and hygiene. Not all of these concerns may reach the level of severity required to invoke a prohibition on inhuman or degrading treatment, most frequently cited in relation to institutionalised care, but they are nevertheless central to the autonomy, dignity and freedom of the individual.¹⁸² While broadly defined international norms may arguably be applicable in such circumstances there has been limited demonstrable effort made by either States or treaty monitoring mechanisms alike to interpret and apply such protections to older persons living in residential or institutional care. This has resulted in an invisibility of the issues at an international level, now necessitating normative clarity.

The gap in binding normative standards in relation to long term care is demonstrated through the plethora of non-binding voluntary charters of rights that have come into being over the past decade globally. For example, the European Charter of the Rights and Responsibilities of Older People in Need Of Long-Term Care And Assistance sets out detailed standards in relation to physical and

177 *H.M. v. Switzerland*, no. 39187/98, judgment of 26 February 2002, para. 48.

178 See also *D.D. v. Lithuania* (Application no. 13469/06), 14 February 2012

179 Similarly in the application of this right at national level it has been found that prolonged detention in institutional care without consent engaged Article 5- JE V DE (2006) EWHC 3459 (Fam.)

180 *Stanev v. Bulgaria*, (Application no. 36760/06)

181 Recognised by the Council of Europe Committee of Ministers in Guiding Principles appended to Recommendations no.R (94) 9 of the Committee of Ministers on elderly people

182 E.g. Northern Ireland Human Rights Commission, In Defence of Dignity, The Human Rights of Older People in Nursing Homes, Inquiry Report March 2012; www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf; Scottish Human Rights Commission, Care about Rights project- www.scottishhumanrights.com/careaboutrights; P. Lloyd-Sherlock and N. Redondo (2010) "Institutional care for older people in developing countries: Repressing rights or promoting autonomy? The case of Buenos Aires, Argentina", Dev Research Briefing, February 2011

mental well-being, freedom and security, right to self determination, right to privacy, right to high quality and tailored care, right to personalized information, advice and informed consent, right to continued communication, participation in society and cultural activity, right to freedom of expression and freedom of thought/conscience, beliefs, culture and religion, right to palliative care and support, and right to redress.¹⁸³

Residential or nursing homes can also be deemed as presenting high risk factors for abuse and violence against older persons, particularly where staff are poorly trained and there is a lack of systematic monitoring or clear standards and criteria for their operation. The vulnerability of older persons in institutional and long term care to inhuman or degrading treatment, prohibited by Article 7 ICCPR and violating the right to be treated with dignity and respect, has been highlighted by the Human Rights Council¹⁸⁴, Committee against Torture¹⁸⁵, the Human Rights Committee in reports under the UPR mechanism¹⁸⁶ and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.¹⁸⁷

In the Inter-American system, in circumstances not directly related to older persons in institutional or residential care but nevertheless analogous, the duty to protect against the violations of third parties has been determined by the Inter-American Court¹⁸⁸ and the Commission has asserted that, “a violation of the right to physical integrity is even more serious when a person is under the custody of the State in a particularly vulnerable position.”¹⁸⁹ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention Belem Do Para) recognizes the need to protect women from violence in both the private and public sphere, in family or institutional settings.

Case law arising from the ECHR illustrates positive obligations on States and local authorities to protect older persons from abuse in families or institutional care.¹⁹⁰ The case of *Heinisch v. Germany*,¹⁹¹ for example, centres around the right to freedom of expression following the dismissal of a whistle-blower in a care home for older persons, drawing attention to the importance of the dissemination of information about the quality of care in order to prevent abuse where the vulnerability of older persons may mean they are unable to draw attention to this themselves. Another ECHR case highlights States obligations to make regulations for appropriate protection measures and set up effective accountability mechanisms and independent judicial systems relating to the protection of older persons.¹⁹² Such measures are not explicit in the ECHR however, and have developed from evolving interpretation of standards by the ECtHR as a result of the serious concerns raised related to older persons.

183 European Charter of the Rights and Responsibilities of Older People in Need Of Long-Term Care And Assistance, May 2010, - http://www.redattoresociale.it/RedattoreSocialeSE_files/Speciali_Documenti/309934.pdf. See also, Charter of Rights for people in Need of Long Terms Care and Assistance Germany 2007, The South African Older Persons Charter 2009, Charter of Residents Rights and Responsibilities, Australia, Charter of Rights for People with Dementia and the their Carers in Scotland, 2009 etc.

184 Human Rights Committee, Concluding Observations, Germany, CCPR/CO/80/DEU, 4 May 2004, para 17.

185 Committee Against Torture, General Comment No 2, Implementation of article 2 by State Parties, CAT/C/GC/2, 24 January 2008, para 15

186 Human Rights Committee, Concluding Observations, Germany, CCPR/CO/80/DEU, 4 May 2004, para 17

187 A/HRC/13/49/ Add.5 para 237.

188 Juvenile Reeducation Institute v Paraguay. Preliminary Objections, Judgment September 2, 2004, Series C No 112, para 159

189 Congo v Ecuador Case 11.427, Report No 63/99, Inter-Am. C.H.R. OEA/Ser.L/V/II.95 Doc 7 rev at 475 (1998)

190 Z and others v. the United Kingdom (GC), no. 29392/95, judgment of 10 May 2001, para. 74.

191 Heinisch v. Germany, judgment of 21 July 2011, no. 28274/08, para. 71.

192 Dodov v. Bulgaria, no. 59548/00, judgment of 1 January 2008

The revised European Social Charter, Article 23, deals directly with the rights of older persons living in institutions providing that certain rights must be guaranteed, namely appropriate support respecting the right to privacy, dignity, participation in decisions, the protection of property, the right to maintain personal contact with persons close to the individual¹⁹³ and the right to complain about treatment and care institutions. The European Committee of Social Rights has also found that all institutions should be licensed, subject to a declaration regime, to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate. Issues such as the requirements in terms of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision¹⁹⁴.

While the rights of older persons in institutional care have been recognised in broad terms by international mechanisms, it must be considered as matter of urgency what further consolidation, clarity and detail of binding standards could be further expanded upon from more detailed regional standards and recommendations as well as the evidence and experience of older persons.

X. Older persons and the justice system

Older people require an awareness of their legal rights, legal aid and availability of effective remedies in order to have access to justice. In relation to abuse there are concerns older persons often fear to report them because of their dependency on the abuser, concern for repercussions, anxiety over a lack of support or lack of familiarity or the accessibility of reliable mechanisms. Furthermore, at a national level, the majority of litigation relating to older persons has focused on pension rights, which may be denied without safeguarded administrative procedures. Due process guarantees may also be essential for other issues affecting older people such as guardianship orders where older persons may not be adequately represented or heard.

The Secretary-General has highlighted how some countries have developed special measures to ensure access to justice for older persons such as the provision of legal aid or dedicated bodies to assist them; deferral, reduction or exemption of litigation fees; special courts and jury systems to handle disputes involving older persons; human rights counselling services for older persons in welfare facilities; and grant loans to cover the expenses of trials.¹⁹⁵ There has been limited exploration of age-sensitive access to justice standards such as these by international human rights law.

The ECtHR has given limited consideration to the relevance of the advanced age of a person in considering whether a case is heard “within a reasonable time” under Article 6(1) of the ECHR and the right to a fair trial.¹⁹⁶ In these cases the Court established that the administrative and judicial authorities are obligated under Article 6(1) to act with “exceptional diligence” in light of the

193 Guiding Principles appended to Recommendations no.R (94) 9 of the Committee of Ministers on elderly people recognises that the right to maintain family relationships and personal contacts may be of importance to those in institutional care settings where contact with family, friends, spiritual advisers etc will be of particular importance to maintain well-being.

194 The Rights of Elderly Persons under the European Social Charter, Draft Information Document drawn up by the Secretariat of the Council of Europe, Department of the European Social Charter, March- April 2011

195 A/66/173; See American Bar Association, Commission on Law and Aging, Report to House of Delegates on court focused elder abuse initiatives, August 2012

196 *Süssmann v. Germany* (GC), no. 20024/92, judgment of 16 September 1998; *Jablonská v. Poland*, no. 60225/00, judgment of 9 March 2001.

applicant's age and state of health. The ECtHR has also held it relevant to consider the age of an applicant, alongside other factors, in awarding damages.¹⁹⁷

Increasingly older populations in prisons also present many challenges, such as safe conditions of confinement for those with special support needs, mobility needs, protections against violence and age appropriate educational and vocational opportunities, which have been largely unaddressed by international treaty bodies. It must also be considered whether the continued incarceration of older persons may be a disproportionately severe treatment and whether certain considerations should apply to older prisoners. For example, Article 4(5) of the IACHR explicitly prohibits imposing the death penalty in the case of the very old. This is relevant in a context where the population in death row had aged significantly.

The ECtHR has frequently considered conditions of detention as they relate to older persons, for example, in the case of *Sawoniuk v. the United Kingdom*¹⁹⁸ the Court found that while there is no prohibition contained in the ECHR of the detention of older persons that, "a failure to provide the necessary medical care to prisoners may constitute inhuman treatment and there is an obligation on States to adopt measures to safeguard the well-being of persons deprived of their liberty." This case, amongst others,¹⁹⁹ demonstrates that ECtHR will take into account the particular circumstances of vulnerability, such as age, in its consideration as to whether a violation of the ECHR can be found. Again, there appears to be limited exploration of these issues relating to older prisoners in relation to international human rights norms.

XI. Participation and social inclusion

The exclusion of older persons is a problem affecting many societies and requires measures to ensure their participation in all areas of public life. It is arguable that without such guarantees the human rights framework could be in danger of perpetuating a view of older people as passive and in need of protection, not as rights-holders, with a right to inclusion in the life of the community, to freedom, dignity and autonomy.²⁰⁰

The Special Rapporteur on the right to the highest attainable standard of physical and mental health considers that "that there must be a paradigm shift away from the perception of older persons as a "social burden" to one that emphasizes the process of "active ageing" and that will reorient our ideas about ageing to focus on the continuing contribution of older persons to society."²⁰¹ The concept of active ageing refers to the continuing participation in social, economic, cultural and civic affairs, and not simply the ability to be physically active to participate in the labour force.

The direct and informed participation of older persons in the design of public policy is also critical to their integration as rights-holders, protected against social exclusion and isolation. Ensuring the political participation of older persons is necessary to guarantee that States develop age sensitive

197 *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, judgment of 26 July 2011.

198 *Sawoniuk v. the United Kingdom*, no. 63716/00, decision of 29 May 2001. Similarly in the case of *Enea v. Italy* no. 74912/01, judgment of 17 September the Court found that the detention of an older aged sick person over a lengthy period may fall within the scope of Article 3, although no violation was found in this instance. 2009, para. 59

199 *E.g. Mousiel v. France* (2004) 38 E.H.R.R. 4; *Price v. the United Kingdom*, no. 33394/96, judgment of 10 July 2001, para. 30.

200 United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People under International Law, The, Kanter, Arlene S. 25 Ga. St. U. L. Rev. 527 (2008-2009)

201 A/HRC/18/37, para.13

laws and policies to implement and mainstream access to the required protections. The participation of older persons may not only, therefore, be developed into a right in and of itself but is also a way of ensuring that they play an active role in society and that age-sensitive considerations are included in law and policy.

It has been suggested that in some instances there are barriers to older persons accessing the right to political participation and enfranchisement.²⁰² Issues of capacity may affect an older person's right to vote and special measures of protection may be required to ensure older persons are not deprived of this right. It is notable that the IACHR acknowledges the rights of all citizens to take part in public affairs, and to vote but limits that right on the basis of age, among other characteristics.²⁰³

The CRPD includes the right of all persons with disabilities to "full and effective participation and inclusion in society"²⁰⁴ while no such rights are explicitly recognized for older persons who are shown to be systematically excluded and isolated. In order to achieve the goal of participation and inclusion it is necessary that education, employment, health care, social service systems, transportation, technology and society generally must be adapted to ensure they are accessible and appropriate. Also, Article 4(3) of the CRPD calls for State Parties to "closely consult with and actively involve persons with disabilities"... "through their representative organizations" in "the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities." The right to health also requires active and informed participation in policy decisions by those populations that affected by them.²⁰⁵

The revised European Social Charter uses the expression "full members" of society meaning older persons should not suffer any social exclusion or ostracism on account of their age or physical state. Similarly Article 25 of the Charter of Fundamental Rights of the European Union "recognizes and respects the rights of the elderly to live a life of dignity and independence and to participate in social and cultural life." It must be considered whether normative standards guaranteeing the right of participation of older people could be further developed in the international sphere.

XII. Concluding remarks

Over the last century the international human rights framework has developed protection mechanisms along group specific lines, such as the protection of women, children, persons with disabilities, migrant workers, indigenous peoples etc. These group specific approaches to the protection of human rights suggest subtle, but often significant, differences in which the rights of various groups should be treated in a way which may be more attuned to the diversity of human experience.²⁰⁶

202 E.g. The Commission on the Status of Women has noted that "long queues of voters... may be most uncomfortable for women voters, particularly the elderly"- Paper submitted to the Commission on the Status of Women, 48th Session, 1- 12 March 2004 at 7

203 IACHR, Article 23

204 CRPD, Article 3(c)

205 E/CN.4/2006/48

206 The human rights of older persons: a growing challenge. Frederic Megret. [H.R.L. Rev. 2011, 11\(1\), 37-66](#)

The shared experiences of older persons globally as a diverse, but nevertheless minimally definable and increasingly large group in society, alone gives rise to consideration of the necessity of tailored approaches to rights protection. The non-implementation of existing standards, themselves widely viewed as inadequate to the situation of older persons, and the systemic and global non-realization of the rights of older people everyday strengthens this argument. This report provides some of the supporting substantive legal analysis illustrating the demonstrable inadequacy of protection arising from normative gaps, as well as fragmentation and a lack of coherence and specificity of standards as they relate to the experience of older persons.

The analysis illustrates areas, such as age discrimination provisions, where the historical failure to name older persons as a protected group has led to their relative invisibility in terms of human rights protection, despite evolving inclusive definitions which include age.²⁰⁷ In other areas, such as in relation to the right to health, education or housing or access to justice, the standards of protection are so broad in scope and lacking in specificity when it comes to the lived experience of older persons in the exercise of these rights that it may be concluded that there is an inadequacy of protection, or indeed normative gaps.

There are areas related to the experience of older persons which are all but completely overlooked by the human rights system, such as the rights issues arising in the delivery of home, institutional or residential care services, or the rights engaged at the end of life and access to palliative care. While we may seek to uncover the relevance of existing standards through progressive interpretations and careful analysis, overall it would appear there are normative and protection gaps and a need for evolving clear and comprehensive standards to ensure implementation at a national level.

In areas including the right to social security, the right to health or the protection of older women, human rights mechanisms have attempted to address the specific concerns of older persons and elaborate on existing standards.²⁰⁸ These General Recommendations or Comments of treaty bodies and reports of the UN Special Procedures are highly valuable and welcome in providing much needed elaboration and specificity of standards. It is notable, however, that, while of normative significance in providing authoritative interpretative statements to clarify the scope and content of human rights norms, they are nevertheless technically non-binding and are often not considered to be determinative of State's obligations.²⁰⁹ It can also be speculated that the scope of protection and interpretation of the rights frequently may depend on a number of factors such as the composition of the supervisory body, its commitment and combined expertise, as well as its operational creativity within the broader political climate in which it exercises its functions and the content of the country reports it receives.²¹⁰ An over reliance on such texts cannot be seen as a substitute for internationally agreed, legally binding standards to protect, respect and fulfil the rights of older persons.

Similarly, the body of soft law standards adopted by the United Nations such as the Vienna International Plan of Action on Ageing (1982), the UN Principles of Older Persons 1991 and the

207 E.g. CESCR, 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)

208 E.g. C/2010/47/GC.1; CESCR, General Comment No. 6; A/HRC/18/37; A/HRC/14/31.

209 For further discussion see Center For Human Rights And Global Justice Working Paper Number 17, 2008, Normative Instruments In International Human Rights Law: Locating The General Comment, Conway Blake

210 American Bar Association, Commission on Law and Ageing, Report Adopted by the House of Delegates on 8 August 2011

Madrid International Plan of Action of Ageing (MIPAA 2002) while of critical importance in the further realization of welfare of older persons do not have a human rights focus, are non-binding in nature and do not substitute legally binding standards.

Recognition must also be given to the range of highly relevant normative standards which have come into force with the advent of the CRPD such as the right to independent living, legal capacity, participation in decision making and the concept of reasonable accommodation or universal design.²¹¹ These, however, only apply partially – or may not apply at all – to older persons and they are not sufficiently tailored to their situation. Furthermore, even when they might apply to some older persons – e.g. to older persons with disabilities – their specific situation is not necessarily given sufficient attention in the application and implementation of the standards.

The heterogeneous nature of older people as a group and the diversity of their experiences gives rise to additional important considerations of the intersectionalities and multiple layers of discrimination affecting older persons based on their gender, minority status, marital status, health status, sexual identity or orientation, citizen or migrant status etc. The gender sensitive protections required by older women are of particular relevance given the demographic statistics of ageing²¹² and systemic inequalities throughout women's lives which have particular repercussions and cumulative impacts on the realization of rights in older age.²¹³ Without a comprehensive approach to the protection of the rights of older persons addressing these complexities is in danger of remaining peripheral, despite their importance to the full realization of rights for all older persons.

The indivisibility, interdependence and interrelatedness of all rights also comes to the fore through an overview analysis of the rights engaged, for example, the ways in which age discrimination and ageist attitudes can form barriers to access to key services, or the lack of access to resources by older women renders them vulnerable to violence and abuse, or the non-realization of the right to legal capacity for older disabled persons which provides a barrier to access to justice. This recognition adds further weight to the argument that any appropriate mechanism for the better protection of the rights of older persons must be holistic in nature and comprehensive in its scope, not seeking to rely on further piecemeal development of standards.

Standards of protection for older persons can be identified throughout the regional systems of human rights protection, in particular, the Inter-American, the African and European, each with its own supervisory mechanisms. These elaborations on the rights of older persons have vital jurisprudential and normative value in any standards setting process at the international level. Nevertheless, this report is illustrative of the wide dispersal, diversity and lack of coherence of normative standards of human rights throughout the systems. An overarching framework and dedicated measure at the international level would have the greatest geographic reach and prominence providing the necessary coherence to an otherwise fragmented landscape of legal standards.

211 Article 19, Living independently and being included in the community; Article 12 Equal recognition before the law; Article 29 Participation in political and public life; Article 30 Participation in cultural life, recreation, leisure and sport; Article 2 definition of reasonable accommodation and universal design.

212 A/66/173, para 3

213 CEDAW, General Recommendation No. 27, CEDAW/C/2010/47/GC.1

The normative legal standards of human rights protection related to older persons therefore require to be developed within a comprehensive framework recognising the indivisible, interdependent and interrelated nature of the rights it seeks to protect. Further action must clarify the scope and breadth of human rights protection for both States and other duty bearers, thereby assisting with the implementation of the related laws, policies and programs to protect, respect and fulfil the human rights of all older persons.

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