



Open-Ended Working Group on Ageing

Tenth working session

15–18 April 2019

Chair's summary of the key points of the discussions at the tenth session of the Open-ended Working Group on Ageing established for the purpose of strengthening the protection of the human rights of older persons

Introduction

The tenth session of the Open-ended Working Group on Ageing (OEWG) began with the election of officers. The OEWG elected by acclamation myself as Chair; Ms. Roseny Fangco (Philippines), Ms. Lidija Dravec (Slovenia) and Ms. María Luisa Portocarrero (Portugal) as Vice-Chairs; and Ms. Renne Abbey (Ghana) as Rapporteur.

Regarding the composition of the Bureau¹, allow me to express once again my great satisfaction with the fact that the Bureau is currently comprised in 80% by women representatives, which represent a very significant and positive sign in the efforts by Member States and regional groups in achieving gender parity within the United Nations.

Consequently, the OEWG adopted the agenda and the programme of work for the session. It is to be highlighted that during the ninth session, the OEWG organized its work accordingly to the oral decision taken during the discussion on the way forward held during the ninth session, in July 2018. In that regard, during the inter-sessional period, the Bureau proposed and organization of work based on a general debate on the topic "*Measures to enhance the promotion and protection of the human rights and dignity of older persons*"; two interactive discussions on the focus areas of "*Education, training, life-long learning and capacity building*" and "*Social protection and social security (including social protection floors)*"; an interactive discussion on normative elements to follow up the examination of the focus areas of the ninth session

¹ Currently the Bureau is composed by Mr. Martín García Moritán (Argentina-GRULAC), Ms. Ms. Roseny Fangco (Philippines-APG), Ms. Lidija Dravec (Slovenia-EEG), Ms. María Luisa Portocarrero (Portugal-WEOG) and Ms. Renne Abbey (Ghana-AG).

“Autonomy and independence” and *“Long term and palliative care”*²; and a discussion on the way forward.

Regarding the two focus areas selected for the tenth session, during the inter-sessional period, the Chair requested Members of the Group (Member and Observer States) and other relevant stakeholders (National Human Rights Institutions, Intergovernmental Organizations, UN Agencies and Non-governmental Organizations) to submit substantive inputs based on two questionnaires prepared by the Office of the High Commissioner for Human Rights (OHCHR) and the Department of Economic and Social Affairs (DESA). In that sense, the OEWG received inputs from 36 Member and Observer States, 18 NHRIs, 2 Intergovernmental Organizations, 10 entities of the United Nations System, and 40 accredited NGOs.

On the basis of the large number of inputs received, the Bureau, through the Office of the High Commissioner for Human Rights (OHCHR) and the Department of Economic and Social Affairs (DESA), prepared two discussion papers for each interactive discussion on the focus areas, making a summary of the contributions and highlighting the commonalities and trends identified in the responses to the questionnaires. I want to particularly thank OHCHR and DESA for preparing those excellent analytic documents which helped guiding the interactive discussions that the OEWG held on the two focus areas.

The documents inclosing the substantive inputs received, as well as the analytic discussion papers for the two interactive discussions held on the focus areas are available at the OEWG’s website.

Furthermore, and as agreed at Bureau level during the inter-sessional period, the OEWG proceeded during its tenth session to hold an interactive discussion on normative elements to address the issues related to the two focus areas of the ninth session, namely *“Autonomy and independence”* and *“Long term and palliative care”*.

In that regard, during the inter-sessional period, the Chair requested Members of the Group and other relevant stakeholders to submit normative inputs based on two questionnaires prepared by the Office of the High Commissioner for Human Rights (OHCHR) and the Department of Economic and Social Affairs (DESA). In that sense, the OEWG received inputs from 25 Member and Observer States, 1 Intergovernmental Organization, 16 NHRIs, 4 entities of the United Nations and 37 accredited NGOs.

On the basis of the inputs received, the Bureau, through the Office of the High Commissioner for Human Rights (OHCHR) and the Department of Economic and Social Affairs (DESA), prepared two compilation papers in order to guide the interactive discussion on normative elements.

² During the discussion on the way forward of the seventh session of the OEWG, the Group decided to focus its future sessions on concrete issues that affect the enjoyment of the human rights of older persons. A list of the focus issues proposed by the Members of the Group was included in the segment devoted to the Chair’s summary of the Report of the seventh session (Document A/C.278/2016/2).

After the adoption of the agenda and the programme of work, the Group considered the participation of “A” status National Human Rights Institutions (NHRIs)³. In that regard, and in accordance with OEWG’s Decision 7/1⁴ on the modalities of participation of national human rights institutions in its work, adopted at the first meeting of its seventh session on 12 December 2016, requests from 14 “A” status National Human Rights Institutions had been circulated to all States members of the OEWG by the Secretariat through the Bureau of the Open-ended Working Group four weeks before the tenth session.

In that sense, the OEWG decided to apply the arrangement outlined by its former Chair. Mr. Mateo Estrémé (Argentina), at the time of adoption of the decision on modalities of the NHRIs participation, that was included in the Chair’s summary contained in Section IV of document A/AC.278/2016/2, which specified that those national human rights institutions would be able to take separate seating after Member States and observer States, to take the floor, without the right to vote, under any agenda item and to submit written contributions to the Working Group under any agenda item.

I would like to welcome the active participation and meaningful contributions of those NHRIs to the discussions and the work of the OEWG.

In that regard, the OEWG continued to enhance the participation of NHRIs in its work, according to the mandate given by the General Assembly through its resolution 72/181, of 19 December 2017, entitled “National institutions for the promotion and protection of human rights”.

After the consideration of the participation of NHRIs in the session, the OEWG proceeded to approve the participation of NGOs without ECOSOC consultative status which requested accreditation. In that regard, the OEWG received a number of 36 requests for accreditation of NGOs without ECOSOC consultative status, in accordance with the “Modalities of participation of non-governmental organizations in the work of the Open-ended Working Group on Ageing” adopted by the OEWG in its organizational session in 2010 and contained in Section F of Document A/AC.278/2011/2.

In total, 289 representatives from non-governmental organizations (NGOs) registered to participate in the session, of which 105 representatives from 55 NGOs attended.

Subsequently, the OEWG held its general debate on the topic “*Measures to enhance the promotion and protection of the human rights and dignity of older persons*”. I want to acknowledge and appreciate the active participation of a large number of Member and Observer

³ “A” status NHRIs are accredited by the Global Alliance of National Human Rights Institutions and are in full compliance with the Paris Principles, as endorsed by the General Assembly in its resolution 48/134 of 20 December 1993.

⁴ Contained in in section E of the report of the Working Group on its seventh session (A/AC.278/2016/2).

States that made interventions during the general debate, as well as groups of States, NHRIs, IGOs and NGOs.

During the opening segment I emphasized that for the very first time we had interpretation services during the whole session, in accordance with what was instructed by the last resolution 73/143 *"Follow-up to the Second World Assembly on Ageing"* adopted by consensus in the General Assembly. In this regard, I would like to thank DGACM for their important collaboration in the organization of this session.

Having the interpretation services allows us to guarantee a greater participation of all the Member States, one of my main objectives as President, that more Member States are involved in the debates and participate constructively in the sessions.

General Debate

This year the participation of Member States during the General States significantly increased, almost 20 more Member States took part of this segment, which represents an excellent sign and greater interest in the work of this Group.

During the general debate, delegations stressed the importance to increase the visibility of and attention to the specific challenges faced by older persons in the global development policy framework, including identifying possible gaps and how best to address them. Delegations also stressed that population ageing can no longer be ignored, especially taking into account that the proportion of older persons is growing at a faster rate than the general population.

This Working Group was recognized as been the most prominent international forum specifically devoted to the rights of older persons. In addition, many delegations expressed satisfaction with the work methodology that has been conducted since 2016, that enables actors to analyse several issues in depth.

It was mentioned that it is undeniable that older persons can make a significant contribution to the social, economic and sustainable development of their societies, if an enabling environment and adequate guarantees are in place. In that sense, it is imperative to fully empower older persons to allow them to effectively make that contribution, becoming not only recipients of special care and social protection, but also specific rights holders and active, autonomous and independent agents and beneficiaries of change.

Several delegations made reference to the importance of strengthening the further implementation of the Madrid International Plan of Action on Ageing in order to achieve its goals and to seize this instrument as a channel for the inclusion of older persons in an age-inclusive implementation of the 2030 Agenda and the attainment of the Sustainable Development Goals.

In addition, some delegations stressed that it is of utmost importance to have an international legally binding instrument that can clearly establish the obligations of Member States when it comes to the protection of the Human Rights of older persons. In that sense, the regional conventions, such as the Interamerican Convention on human rights of older persons and the and the Protocol to the African Charter on the Rights of Older Persons, were identified as useful precedents, especially bearing in mind the decisions that are taken by regional courts of human rights which interpret the international obligations.

Finally, a large number of delegations highlighted, and shared national practices and strategies related to social protection and education aimed at guaranteeing better services and access to basic human rights of older persons.

Interactive discussions on the focus areas

Following the general debate, the OEWG held two interactive discussions on the focus areas of the ninth session, namely "*Education, training, life-long learning and capacity building*" and "*Social protection and social security (including social protection floors)*". At this stage I would like to express my deepest appreciation to the panelists for their excellent and very substantive interventions, which provoked a deep and fruitful debate among the Members of the Group, really allowing it to become closer to fulfilling its mandate of strengthening the protection of the human rights of older persons. The panelists included the Independent Expert on the Enjoyment of All Human Rights by Older Persons, representatives from the Office of the High Commissioner for Human Rights (OHCHR), representatives of NHRIs, representatives from national Governments, and the Special Envoy of the Secretary General on Disability and Accessibility⁵.

⁵ The panelists on "*Education, training, life-long learning and capacity building*" were Rosa Kornfeld-Matte, Independent Expert on Enjoyment of All Human Rights by Older Persons; Christoph Angster, Senior Policy Officer on Ageing, Federal Ministry of Labour, Social Affairs, Health & Consumer Protection, Austria; Tamara Nikolić, Assist. Professor, Department of Adult Education, University of Belgrade, Serbia; Lily Gray, Senior Liaison Officer, UNESCO; María Soledad Cisternas Reyes, Special Envoy of the UN Secretary-General on Disability & Accessibility; Mathias von Schwanenflügel, Professor & Director-General for demographic change, older persons and social security, Ministry for Family Affairs, Senior Citizens, Women and Youth, Germany; Karen S. Gomez Dumpit, Commissioner on Human Rights, Philippines; Omobolanle Amaike, Lecturer with expertise in social gerontology, Department of Sociology, University of Lagos, Nigeria; Alana Margaret Officer, Senior Health Adviser, Department of Ageing & Life Course, WHO. The panelists on "*Social protection and social security (including social protection floors)*" were Rosa Kornfeld-Matte, Independent Expert on Enjoyment of All Human Rights by Older Persons; Adriana Elizabeth Rovira Benitez, Director, National Institute for older persons, Uruguay; Himanshu Rath, Founder & Chairman, Agewell Foundation, India; Vinicius Carvalho Pinheiro, Special Representative to the United Nations & Director, ILO; Guhercan Vural, Associate Expert, Ministry of Family, Labour & Social Services, Turkey; Tatiana Moskalkova, High Commissioner for Human Rights, Russian Federation; Andrew Kavala, Civil Society Platform for Social Protection, Malawi; Rodrigo Jiménez, Lawyer & consultant specialized in human rights of older persons, Costa Rica.

Each interactive discussion on the focus areas was preceded by a panel which featured presentations from different stakeholders who provided their insights from different perspectives, such as the human rights treaty body system, the current framework of international human rights law, the national and regional experiences, the specific human rights mandates and the national human rights institutions.

Each panel was followed by interactive discussions among all stakeholders, guided by the discussion papers prepared by OHCHR and DESA, which summarized the main trends and commonalities from the inputs received prior to the session on the two focus areas.

a. "Education, training, life-long learning and capacity building"

On the interactive discussion on "Education, training, life-long learning and capacity building", panelists, delegations and participants welcomed this substantive discussion on a basic human right which is grounded in international human rights law and other international treaties.

In that sense, The Universal Declaration of Human Rights was mentioned since it recognises that everyone has the right to education that shall be directed to the full development of the human person. Furthermore, the International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. Other international treaties also recognize the right to education, as the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention against Discrimination in Education, which recognizes the right to continuous education without discrimination.

Participants indicated that despite the existence of the aforementioned provisions, the right to education has not specifically applied to the "life-course" or to "life-long learning" within the international human rights framework.

It was also mentioned that many older persons continue to experience the denial of this fundamental right due to numerous barriers such as the lack of information on available education, the cost of trainings, ageist stereotypes, among others. In that regard, some participants highlighted the need for an international binding instrument on the rights of older persons to hold States accountable in issues relevant to older persons, including the right to education.

Panelists mentioned that ensuring the access to education and life-long learning for older persons mean that they can be more active and involved in our societies, and it can also improve their self-esteem because it promotes their individual autonomy. It was said that despite the content of SDG 4, its targets and indicators do not address the whole age range.

Delegations stressed that courses on IT are essential to reduce the digital gap, which enables older persons to be increasingly more active in a digital society. Learning IT means not be excluded and isolated. In that context, it was mentioned the third intersessional Conference held in Vienna last year, specially its outcome document regarding the human rights of older persons, including their right to education and lifelong learning, related to technological developments such as digitalization, robotics, automation and artificial intelligence.

During the discussion participants mentioned a number of measures implemented at the national level to improve the access to education for older persons, such as digital skills training programmes and courses in which older persons share their experiences with young people.

b. "Social protection and social security (including social protection floors)"

In terms of the sources in international law, participants mentioned that the right to social security is grounded in international human rights law and several treaties contain specific references to old age protection through social security schemes, as well as some elements of the 2030 Agenda.

In that respect, the Universal Declaration of Human Rights recognizes that everyone has the right to social security. Furthermore, the right to everyone to social security and to an adequate standard of living are recognized in articles 9, 10 and 11 of the International Covenant on Economic, Social and Cultural Rights, while several other human rights treaties contain references to old age and the right to social security, as other regional and international treaties. Regional instruments were also mentioned, for instance, article 17 of the Interamerican Convention on the Rights of older persons, which states that "All older persons have the right to social security to protect them so that they can live in dignity".

It was also stressed that the ILO has also adopted a normative framework in the field of social security and old-age benefits through several Conventions and Recommendations, providing concrete guidance for the realization of the human right of older persons to social security and an adequate standard of living, to support their health and well-being, including medical care and necessary social services.

In addition, it was stated the importance to recognise the value of unpaid work, especially the one carried out by women in the informal economy. In that regard, it was pointed out the need to broaden state pensions in a responsible manner in order to reduce the financial inequalities faced by older persons, in particular older woman.

Many delegations stressed that they count with constitutional provisions that recognize the right to social security or social protection, for instance the Constitution of Costa Rica establishes the right to social security and provides measures to achieve the universalization of social insurance, as well as the Constitution of the Republic of South Africa.

Panelists indicated that older persons should have access to effective judicial or other appropriate remedies, legal assistance and adequate reparation. According ILO standards accountability mechanisms are central to strengthening and securing the implementation of old-age benefits including through a rights-based approach.

As far as the challenges in the access to social protection are concerned, an inadequate coverage under international human rights law and national law was identified by panelists. These challenges are mainly related to discriminatory age limits on some social security and social protection measures, pension penalties for those who wish to continue working after retirement age, among others.

A large number of participants also shared their good practices and legislation to ensure the right to social protection for older persons and described their social protection systems.

Interactive discussion on normative inputs on the focus areas of the ninth session

For the second time the OEWG focused its discussions on concrete areas where the enjoyment of the human rights of older persons may be affected and require further protection.

The goal of this interactive segment was to provide a follow up on the very fruitful and substantive discussions held during the ninth session on “*Autonomy and Independence*” and “*Long-term and Palliative Care*”, and to continue building on them from a normative point of view, in order to exchange views, best practices and concrete elements.

During the discussion on normative inputs there was an active participation from Member States, NGOs and NHRIs. Some participants highlighted the urgent need of drafting an international, legally binding instrument to guarantee the rights of older persons, including their autonomy and independence and their right to long-term and palliative care, and to challenge systemic discrimination and barriers faced by older people. In that sense, participants made reference to the need of considering two regional instruments, the Inter-American Convention on Protecting the Human Rights of Older Persons and the Protocol to the African Charter on Human and Peoples’ Rights relating to the rights of Older Persons, when drafting a potential international binding instrument.

In relation to the right of autonomy and independence, some participants expressed that these rights should be included as an overarching principle that applies to every other right as well as an specific right on itself. It was also mentioned the need of developing normative standards that build upon and expand on the Convention on the Rights of Persons with Disabilities.

As it was stated in the compilation made by DESA and OHCHR, with respect to States that had become party to the Inter American Convention on Protecting the Human Rights of Older Persons, those provisions of that treaty explicitly relating to autonomy and independence are part

of their national legal order. The International Covenant on Civil and Political Rights and the European Convention on Human Rights also contain provisions that guarantee to some extent autonomy and independence (for example, the right to respect for one's private and family life) and these guarantees also are part of the domestic legal order in some States.

It was also mentioned the importance to study the right to autonomy in the context of the recognition of legal capacity and guarantees relating to its exercise and respect for decisions taken in the exercise of that capacity. As far as the possession and exercise of legal capacity by older persons is concerned, participants referred to the Convention on the Rights of Persons with Disabilities which also addresses this issue in relation to persons with disabilities. In addition, it was mentioned that the right to legal recognition of a person before the law is also included in other important human rights treaties, including the International Covenant on Civil and Political Rights (Article 16), the Convention on the Elimination of All Forms of Discrimination against Women (Article 15) and regional human rights treaties.

Participants pointed out the need of recognizing that older persons are not a homogeneous group and it is necessary to take into account the importance of intersectional discrimination in the enjoyment of the rights to autonomy and independence.

Furthermore, participants underlined the need to hold a discussion, possibly in the form of a panel with Member States, NGOs and NHRIs, to consider whether any international standard that may be developed should include some or all of these elements as part of a right to autonomy and independence.

As for long-term and palliative care, it was agreed to address these two issues separately since they are not identical in scope and operation. It was also expressed that these rights should be clearly and fully articulated in a normative document to guide States in its implementation. Participants also highlighted the need for better informing people about palliative care to increase knowledge about this right.

It was also noted that there is a considerable variety in the ways in which long-term care services are provided: they vary in how they are legally guaranteed and regulated, whether they are underpinned by a human rights framework, and whether they are adequately funded and appropriately monitored. In some States the process of providing or supporting the provision of long-term care services is still in its early stages, while others have a more highly developed system of long-term care.

Participants also asked to consider devoting more time in the discussion time on normative elements in upcoming sessions of the working group. Additionally, participants emphasized the need to revise and update the 2012 analytical outcome paper of OHCHR "Normative standards in international human rights law in relation to older persons."

Discussion on the way forward

During the discussion on the way forward, delegations expressed their satisfaction with the development of the past three sessions under the format of having substantive discussions on two focus areas which directly affect the enjoyment of the human rights of older persons. Delegations expressed their support in continuing the practice of having an interactive discussion on normative elements to address the focus areas of the previous session.

Member States also expressed their satisfaction with the working document prepared by DESA and OHCHR based on the inputs provided by delegations. In that regard, in my capacity as Chair, I proposed to the Members of the Group to continue working under this format, fostering substantive discussions on issues which affect the human rights of older persons. Delegations also proposed to have a Panel in the normative segment that will allow us to give greater importance to the debate and count with presentations from experts in the field, especially International Human Rights experts, who can lead the discussion.

During the ninth session I suggested to the members of the Group to consider the possibility of having concrete outcomes out of each session, in order to capitalize our deliberations and reflect our agreements with regards to each particular area that affect the enjoyment of the human rights of older persons. I expressed that such a concrete outcome could take many forms, such as a decision or Declaration of the Group, and it should be intergovernmentally negotiated and reflective of the common points identified in any of the two focus areas analyzed from a normative perspective. These debates presented important standards and aspects which would contribute to the drafting of an outcome document, other than this Chair's Summary which presents the session from a partial view.

During this tenth session, I presented again this proposal in order to have a transparent and consensual discussion with member States and other actors regarding the format of this outcome document and the negotiation process. It was my intention to put again this proposal on the table to receive suggestions and analyze which is the best way to approach this outcome document.

I explained that this document will be based on the inputs received for the focus areas analyzed from a normative perspective. That is why the first outcome should include "Violence, Neglect and Abuse" and "Equality and Non-discrimination." The first section of the document will address the most basic and consensual elements on what involves discrimination against the older persons or how the abuse against older persons manifests itself. A second section of the document would include the recognition of necessary measures for states to meet the standards identified.

It is not my goal to have an extensive document that addresses controversial elements, but to have a concise document of two pages that crystallizes the fruitful debates that take place in this Working Group, in which we express the points in common that we have been able to identify.

With regard to the nature of this document, I clarified that it would be non-binding and negotiated by member states during the recessionary period and adopted at the eleventh session. In that sense, I clarified that it is not my intention to negotiate this outcome document during the session of the Working Group that only has 4 days, but during the previous inter-sessional period, and to be adopted during the XI Period of Sessions.

I also invited delegations to make suggestions on possible modalities for the negotiations. Furthermore, I informed that DESA and OHCHR would offer advice and guidance when it comes to the content of the draft.

While a few delegations expressed their reservations about a negotiated outcome document, a majority encouraged the drafting of an outcome document capturing the result of the discussions held during the sessions, and also asked for further clarification regarding the timelines of the negotiation and the topics to be covered.

Regarding the selection of the focus areas for the eleventh session of the OEWG, to be held in 2020, following informal consultations with Member and Observer States conducted at Bureau level during the inter-sessional period, the OEWG made an oral decision selecting the areas of "Access to Justice" and "*the Right of Work and Access to the Labor Market*".

Particularly, I proposed that the OEWG replicate the practice conducted during the last inter-sessional period, and have the Bureau making a call for normative elements to follow up the issues that were analyzed in the tenth session, namely "*Education, training, life-long learning and capacity building*" and "*Social protection and social security (including social protection floors)*" based also on the contributions that were provided during this session, since this method of work proved to be effective for the Group to fulfill its mandate.

As done in preparation for the tenth session, during the inter-sessional period the Bureau will make a call for inputs on the two focus areas of the tenth session, which will then be summarized and analyzed by the Secretariat in order to guide our discussions on the selected areas.

I proposed to continue working on this methodology that allows the Group to hold a substantive discussion on two new focus areas per session, based on the contributions received prior to the session. Substantive inputs will be requested on those areas in the inter-sessional period previous to the session and then the Bureau will circulate analytic papers to guide the discussions during the session. The Group will also continue following up on the focus areas of the previous session from a normative point of view and requesting normative inputs on those areas in the inter-sessional period previous to the session and then circulating analytic papers to guide the discussions during the session.

In conclusion, the Bureau will prepare the provisional programme of work for the eleventh session during the inter-sessional period, which will include a general debate, a segment for discussing the normative inputs received with regards to the focus areas of the tenth session, as

well as two interactive discussions on the new focus areas selected for the eleventh session, and the typical discussion on the way forward. During the inter-sessional period the Bureau will also work on the draft of the outcome document that will be negotiated before the next session, on the basis of consensus and transparency.

Conclusion

To conclude, I would like to express my deepest appreciation to the Secretariat for their constant support to the Working Group, for their outstanding professionalism and collaboration, of the UN Focal Point on Ageing, Ms. Amal Abou Rafeh and her team Julia Ferre, Shatho Nfila, from the Department of Economic and Social Affairs; and to Denise Hauser and Mr. Rio Hada, from the Office of the High Commissioner for Human Rights. My gratitude goes also to the Secretary of the Working Group, Mr. Henry Breed and his team.

Finally, I would like to once more express my appreciation to the distinguished panelists for their substantive contributions to the work of this session of the Group, as well as to the representatives from NHRIs, UN System and civil society for their active participation and constructive engagement. We hope to continue to count with your most valuable presence and contributions in future sessions in order to allow the Group to achieve its mandate, and we look forward for your enhanced participation in this regard.

Last, but not least, I would like to express my sincere gratitude and profound appreciation to the distinguished Vice-Chairs and Rapporteur of the Open-ended Working Group, Ms. Lidiya Dravec of Slovenia, Roseny Fangco of Philippines, María Luisa Portocarrero of Portugal and Ms. Renne Abbey of Ghana, without whose most valuable support and hard work and professionalism in conducting the work of the Bureau of the Working Group, this session would not have been possible.