

# Rights for older persons: the time has come

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#### IFA SECRETARIAT

Jane Barratt, Secretary General

Greg Shaw, Director, International & Corporate Relations

International Federation on Ageing  
351 Christie Street, 1st Floor  
Toronto, ON M6G 3C3 Canada

Tel: 1-416-342-1655 Fax: 1-416-392-4157  
ifa@ifaviv.org www.ifaviv.org



**INTERNATIONAL FEDERATION ON AGEING**  
Global Connections

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Articles selected for publication in *Global Ageing* have been reviewed by members of the Editorial Board; their suggestions and guidance enable the IFA to offer a journal that provides the insights and analyses of experts on policy and practice issues important to those who promote the well-being of older adults throughout the world.

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## From the editors



### Focus on Older People and Human Rights

This edition of IFA's journal *Global Ageing* is dedicated to the issue of human rights and older people, an issue which affects us all and which is currently being debated in many different circles at national and international levels, among policy makers, human rights specialists, age care practitioners as well as by older people themselves. The issue has been produced for distribution at IFA's 11th World Conference on Ageing (Prague, Czech Republic, 28 May to 1 June, 2012) where human rights and older people will be a cross-cutting theme and concern. Whether participating in the Conference or reading this edition at home or in the office, we are all part of the worldwide debate on how to defend and promote older people's place in the world.



Articles in this journal focus on the most important issues for older people and come from contributors from around the world. They focus on issues regarding employment and human rights; care and human rights; participation in society; gender, age and human rights; discriminatory practices; poverty, access to economic activities and social security; as well as regional examples of good practice in the area of human rights and ageing.



Rights issues affect us all – young and old, male or female-- but older people have not always been participants in the rights discourse. This issue aims to remedy this situation by providing an overview of the issues, presented by specialists in different relevant fields. It aims to stimulate ideas and debate which involve both young and old in an intergenerational and international dialogue.

## Older person's human rights and the IFA: *The story so far*

Since its formation in 1973, the IFA has engaged in vigorous advocacy on behalf of the rights of older citizens around the globe. Here our President *Irene Hoskins* shares this proud history.



International conventions adopted by the Member States of the United Nations (UN) have for some time addressed the issue of rights for specific population groups from a global perspective. Prominent examples of such documents are internationally agreed conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, as well as others. Once signed and ratified by a Member State, regular monitoring and reporting on the implementation of such Conventions is required by the UN. This process will not only document human rights violations, but also ensure steady progress towards protecting the rights of vulnerable groups who remain at risk when it comes to the full enjoyment of all fundamental human freedoms and rights.

While there is no doubt that age – both young and old age – may result in vulnerability and therefore constitutes a major risk factor for human rights violations, there is currently no universal human rights standard that protects people from human rights infringements based on old age. In other words, while the absolute numbers of older persons around the world (defined as persons 60 plus by the UN) are steadily and rapidly increasing in all parts of the world, including developing countries, there is no binding UN, or other global, international legal instrument that explicitly protects the human rights of older people.

Progress in the human rights protection of older persons has been made in the case of older women, insofar as the Committee that monitors CEDAW now includes a special commentary on older women. This commentary requires that specific human rights violations against older women are to be included in country reports on implementation of human rights for women, as regularly requested and examined by the inter-governmental CEDAW Committee. While the special commentary is still a relatively new addition to the CEDAW Convention, it is reasonable to expect that this will lead to a more systematic review of age as a multi-faceted risk factor, and ultimately to a more in-depth examination of the specific rights of older women.

Unfortunately, CEDAW is still the exception when it comes to the legally binding commitments of countries to report regularly on age as a potential risk factor with respect to the enjoyment of human rights. However, it is encouraging that recent inter-governmental efforts to frame a new international convention on the rights of older persons have gained considerable momentum. As an international, non-governmental advocacy organization for older people, the International Federation on Ageing (IFA) is committed to follow these new developments and to disseminate information and updates on progress made to IFA members and the readers of this Journal. Further, as a non-governmental organization (NGO) in Consultative Status with the United Nations (UN), IFA encourages and supports the current intergovernmental process towards recognizing age as a risk factor for the universal enjoyment of human rights and fundamental freedoms. As the story on improving the human rights of older persons evolves, the IFA website will provide regular updates on progress achieved in this area and what NGOs and individuals can do to sustain the momentum.

### **IFA's history with respect to the rights of older persons**

IFA is not a newcomer when it comes to the promotion and the protection of the human rights of older people throughout the world. In fact, throughout the past two decades, IFA has played an important role in investigating, formulating and advocating for those rights that take into account age as a risk factor for human rights violations -- regardless of whether they live in the developed or in the developing parts of the world.

This leads inevitably to further questions, i.e. what is the basis for those rights; where are they written down; how can they be enforced; who monitors the implementation of those rights and, finally, what remedies exist if they are being violated?

Currently, the most important international UN document on the rights of older people is the *International Principles for Older People*, adopted by Resolution

by the UN General Assembly in December 1991. The document is based on the IFA Declaration of Rights and Responsibilities of Older Persons released by the IFA Secretariat in 1990 under the direction of then IFA Secretary General, Charlotte Nusberg. The document was subsequently introduced to the UN Commission on Social Development by the UN Ambassador of the Dominican Republic, Julia Alvarez, often referred to at the time as the UN Ambassador on Aging. She was indeed a champion for the cause of population aging at the UN for many years and introduced most major Resolutions on Aging at the UN in the 1980s and 90s.

*Throughout the past two decades, IFA has played an important role in investigating, formulating and advocating for those rights that take into account age as a risk factor for human rights violations...*

The *UN Principles* deal with the most important categories of rights for older persons: independence, participation, care, self fulfillment and dignity. They are broad in scope so as to be applicable to many different settings and populations. Yet they are specific enough to express all the basic aspirations towards a better quality of life of the vast majority of older people everywhere, namely to remain independent; continue to participate in the life of the community and society; receive care when needed; and achieve self-fulfillment and dignity. They will no doubt serve as the foundation upon which further efforts towards a more binding convention will be built. The Principles presently stand as the pre-eminent statement of vision to improve the lives of older person. However, they are not a legally enforceable instrument ratified by UN Member States.

Today, IFA continues its vigorous advocacy efforts to encourage the international community to promote and uphold the rights of older persons, both in cooperation with our colleagues in the international NGO community and as an NGO in its own right. In 2011, IFA was one of the founding members of an international alliance of NGOs advocating for a new UN convention on the rights of older persons. The alliance subsequently launched a comprehensive information

booklet explaining origins, objectives, contexts as well as possible outcomes of a new UN treaty body on the rights of older persons.

## Future outlook

When the UN General Assembly decided in December 2010 to set up a UN Open-Ended Working Group (OEWG) to consider *the existing international framework of human rights and the feasibility of further instruments and measures to promote the human rights of older persons*, NGO advocates for the rights of older people at the UN and elsewhere were euphoric. Since then, the realization has grown that the path ahead may be more arduous than originally anticipated. Thus, IFA will increase its efforts to provide information to its members and bring other interested NGOs together to speak convincingly and with one voice when it comes to advocating for the rights of older people throughout the world. After all, if we don't do it as older people ourselves and collectively as advocacy organizations for older people – who will? IFA's past history at the UN shows that concerted and informed advocacy at the UN does pay off.

**Irene Hoskins**

IFA, President

*irenehoskins@gmail.com*

## MORE

**UN Principles** [un.org/documents/ga/res/46](http://un.org/documents/ga/res/46)

**CEDAW** [www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)

**Disabilities** [www.un.org/disabilities](http://www.un.org/disabilities)

**OEWG** [social.un.org/ageing-working-group/](http://social.un.org/ageing-working-group/)

# International convention on rights of older persons:

*Where we were, where we are, and where are we going?*



## Introduction

**I**t took only very few years to totally change the landscape of the debate around the need for a new international human rights convention on rights of older persons. From the reality of almost a total absence of debate in this field in the late 1990s and the mid first decade of the 21st century, suddenly there is a wealth of debate on this topic. In this short article, I will try to describe the rich development of this field in recent years, as well as share some personal insights and evaluations on the the future of this field.



## Part A: Where we were

It would be safe to say that today we know quite well where we were until very recently, with regard to the development of an international convention on rights of older persons. This is so due to the fact that in the last decade several good research and review studies have been published on this topic. Arguably, the most important historical analysis and review in this field was published in 2002 by Rodriguez-Pinzon and Martin (Rodriguez-Pinzon and Martin 2002). This study, which was funded by the Borchard Foundation, is the most comprehensive analysis of international and regional material in the field of human rights as it relates to older people.

From the international level, the conclusion of the Rodriguez-Pinzon and Martin study highlighted the following:

...A strategy to have a comprehensive legal instrument on elderly rights is missing at the international level in both universal and regional systems. There are very few provisions in international law that directly address elderly rights. There are isolated efforts by certain international bodies to systematically refer to the **rights of the elderly** when interpreting their corresponding conventions...

However, there is no specific international body with the mandate to focus on the **rights of the elderly**. Nor is there an elderly rights convention in place. It is in fact the only vulnerable population that does not have a comprehensive and/or binding

international instrument addressing their rights specifically. (p. 1008).

With regard to the regional level, the findings were very similar:

...Similar to the prevailing situation in the Inter-American System, the **rights of the elderly** in the African System remain uncertain. Notwithstanding the ample powers of the African Commission to address civil and political as well as economic, social, and cultural rights, the scope of elderly rights will depend on the will of that body to interpret all the provisions of the African Charter and to work toward their enforcement. (p. 1007).

The Rodriguez-Pinzon and Martin study opened the gate to numerous other scholarly articles, which followed the same direction. The scholarly statements came this time not from the direction of “international human rights”, but rather from the “elder law” and gerontological direction. For example, the author’s article “From National to International Elder Law” (Doron 2005) argued that:

The extension of elder law into international law holds great promise. It will make possible new areas of cooperation. It will release great creative potential and will allow for the formulation of legal solutions that have hitherto been impossible. It proffers a vision of old age in the perspective of universal law, crossing frontiers and uniting cultures. Finally, it is an expression of the “maturation” of the field of elder law, in the wake of many other fields that, at one stage or another, have undergone a process of internationalization. (p. 65).

This argument was in line with the views of other scholars (Mégret 2011), (Miller 2009), (Tang 2008), and (Tang and Lee 2006) who argued that:

As far as the rights of the older people are concerned, there is a gap in the existing legal provisions. An international convention that recognizes the specific rights of all older persons and is clearly applicable to older people as citizens of signatory states will be important for older people to assert their rights in the national arena. (Tang and Lee, p. 1145).

It is not surprising then, that the supporters of an international convention have concluded that such a convention can be an important step forward in empowering older persons around the world. As described by Tang & Lee:

Overall, the convention would define older people’s rights as human rights and demonstrate that the abrogation of human rights is not acceptable. It would stipulate positive obligations on nations to realize equality and the enjoyment of rights by older people. The treaty would considerably expand the concept of human rights protection for older people, since it would not be only about refraining from doing harm or placing negative obligations on the participating states, but would also lay down norms in order to assist older people to attain a status comparable with that of the rest of the population. To achieve these goals, national governments would be required to ensure that the rights set forth in the convention were reflected in their national legislation. (p. 1143).

It is significant to note that the arguments and data presented by Rodriguez-Pinzon and Martin, and others, were being raised at a time when the United Nations (UN) and the Non-Governmental Organization (NGO) community globally were in the midst of the development of international “soft law” instruments for promoting the rights of older persons, i.e. the Madrid International Plan of Action on Ageing (MIPAA).

The term “soft law” can mean different things (Blutman 2010). In general, on an international level, “soft law” usually refers to non-binding law (i.e. international agreements, declarations, guidelines or other formal sources that are non-binding and/or do not include enforcement measures) or general legal principles or moral values which serve as broad guidelines.

However, as noted in the scholarly literature, “soft law” – while not binding on the formal level – has been proven to play an important role in determining customary international law. Through its specificity, soft international law can act as a guide for policy matters. This is especially true on the international level, where flexibility and diversity is needed – here, “soft law” in the form of detailed yet unbinding legal formula, stands a better chance of being adopted in local policies (Guzman & Meyer, 2010).

In general, it could be stated that in the field of older persons' rights, "soft law" is extensively used as a legal policy tool on the international level. While one may trace earlier documents, it is usually agreed that the significant rich development of soft law started in 1982 with the adoption of the Vienna International Plan of Action on Ageing by the United Nations (Resolution 37/51). The Vienna International Plan of Action on Ageing (VIPAA) (1982) is considered the first specific international instrument on ageing, guiding the fundamental thinking and the formulation of age-related policies and programs (Gersen and Posner 2008). This was followed almost a decade later, in 1991, when the United Nations General Assembly adopted the UN Principles for Older Persons (Resolution 46/91). These principles fell into five clusters in line with key factors in the status of older persons: independence, participation, care, self-fulfillment and dignity.

This dynamic development continued with the dedication of a specific International Day for Older Persons (1990), and the adoption of conceptual framework for the International Year of Older Persons as part of the Proclamation on Ageing (1992). The most recent and pivotal 'soft law' is the UN Madrid International Plan of Action on Ageing known as MIPAA which was endorsed by the United Nations in 2002 (Resolution 57/167). Unlike VIPAA, MIPAA was much more precise and explicit about the need to protect the rights of older persons. Since then, the UN community has been working to promote the implementation of MIPAA, as exemplified at the sixty-fifth session of the Third Committee, follow-up to the Second World Assembly on Ageing when Member States were called upon to develop their national capacity for monitoring and *enforcing the rights of older persons*, in consultation with all sectors of society, including organizations of older persons.

In summary, looking back into its historical development, it seems that the current debate around the need for a new international convention on the rights of older persons was an outcome of a "schizophrenic" situation. On the one hand, communities of older persons and NGOs 'representing and advocating' on behalf of older persons enjoyed the peak success derived from the development of soft law instruments. Indeed civil society in some large part contributed to the evolution of one of the most impressive policy documents in the field of old age, i.e. MIPAA. On the other hand, it was



suddenly under a new “attack” that was almost unheard of in previous times. The facts are indeed a reminder of the frailty of being human - all the “soft law” as well as existing “hard law” human rights protection mechanisms to protect the rights of older persons were (and still remain) insufficient. There is a need to do something new or do something different.

## Part B: Where we are

The developing tension between the rich and substantive “soft law” development as opposed to the almost total absence of effective “hard law” instruments, has led to today’s reality, in which we are in a totally different place with regard to the development of a “hard law” human rights instrument towards older persons. The understanding that existing international “hard law” instruments in the context of human rights of older persons needs to be revisited, and actions ignited both on the global UN level, as well as on the different regional international levels (e.g. AU- African Union or the OAS Organization of American States). Once again, although other actions can be traced, a symbolic and important first point of reference was the UN Expert Meeting Group that was held in Bonn, Germany (April 2009). The international group of experts in the field of elder law held in-depth debates that resulted in various recommendations with regard to the advancement of the rights of older person, including a specific reference to the need of a new convention:

A convention on the rights of older persons would add additional weight in furthering, deepening and more precisely defining the rights of older persons. A convention would create obligatory and binding international law. Similar to the adoption of various other human rights instruments, member states would undertake a threefold commitment when adopting such a convention: to respect, to protect and to fulfill the rights enshrined in the relevant text.

Following the report from the UN Expert Meeting in Bonn, further high level meetings were held by various UN bodies, including that of the UN OHCHR. In July 2010, the UN Secretary General presented a follow-up report on the Second World Assembly on Ageing to the UN General Assembly. The UN process culminated on December 21, 2010, when the UN General Assembly

adopted Resolution 65/182, establishing an “open-ended working group (OEWG) on strengthening the protection of the human rights of older persons.” The role of this working group was to consider the existing international framework for 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.

*Overall, the convention would define older people’s rights as human rights and demonstrate that the abrogation of human rights is not acceptable.*

The OEWG held its first meeting in New York during April 18-21 2010. The purpose of this inaugural meeting was to set the scene of the general relevant international socio-legal scene. The existing international human rights framework was presented along with descriptions as to how it has been applied by the UN Human Rights mechanisms to protect older men and women. Testimonies were presented by various representatives of Human Rights authorities at international, regional and national levels. Overall, the picture presented to the OEWG at this meeting was in-line with that uncovered by the work of Rodriguez-Pinzon and Martin. For example, as described by the statement made by Mr. Craig Mokhiber, from the Office of the United Nations High Commissioner for Human Rights,

..[I]n the absence of a concentrated protection regime at the international level, the attention of an existing mechanism [toward the human rights of older persons] has been, at best, spotty. (p. 2) (Mokhiber, 2010).

In closing Mr. Mokhiber stated that

In spite of the many important applicable provisions of existing UN human rights treaties and mechanisms, the absence of a dedicated international protection regime for older persons continues to hinder the full realization of their human rights. (p. 4).

Despite the evidence of unlawful practices from many testimonies, during this first meeting it was clear that many member states have not yet fully developed their position on the topic. Moreover, strong “voices” opposing a new convention were well numbered among member states. The notion of a “regional” approach was described in statements from some country representatives. For example, the use of the regional monitoring system of MIPAA was considered to be a better alternative than a new convention. Of special note, in the first session of the OEWG was the almost absence of member states from the African region and legitimate voices of older people. Associated with the latter was the ‘at best’ ad hoc organization of NGOs and the broader civil society that mainly represent the voices of older persons themselves.

The second working session of the OEWG, (New York, August 1-4, 2011) was organized around five topics: discrimination and multiple discrimination; right to the enjoyment of the highest attainable standard of physical and mental health; violence and abuse; social protection and the right to social security; and age and social exclusion. Sixteen panelists discussed the extent to which the human rights situation of older persons had been addressed at national and international levels, many in reference to specific legislation, policies and practices. Several speakers raised professional concerns about the slow pace and lack of priority granted to older persons at national and international levels. In almost all presentations, reference was made to the limitations of existing mechanisms.

At this second working session, the attendance was much more significant with some seventy five delegations present. Moreover, the NGO community was also better prepared, and an alliance called “The Global Alliance for the Rights of Older People” was launched outside of the formal UN proceedings. NGOs including AARP, Global Action on Ageing, HelpAge International, International Association of Gerontology and Geriatrics (IAGG), International Federation on Ageing (IFA), the International Network for the Prevention of Elder Abuse (INPEA), Age UK, International Association of Homes and Services for the Ageing (IAHSA) and the ILC Global Alliance were part of the movement. The Alliance presented a clear statement in support of a new convention from those closest to older people at the grassroots.

Once again, mixed messages were heard during this session. While more strong voices in support of a new international HR conventions were presented by different member states (especially the Latin America countries), concerns and oppositions were also once again on the agenda (especially from some European countries). For example, a number of delegations contended that a comprehensive analysis of “protection gaps” was needed, with empirical data to support the argument concerning the existence of such a gap. Others pointed out the need to better utilize MIPAA as a tool for designing policy that would ultimately improve the quality of life of older persons; and, furthermore that there was a need to take into account the 2012/13 review and appraisal cycle of MIPAA before making decisions on whether the rights of older people were adequately protected.

On November 8 2011, the UN General Assembly, as part of its follow-up to the Second World Assembly on Ageing, decided to invite states and relevant bodies to “continue to make contributions to the work entrusted to the open-ended working group, as appropriate” and also to request “the Secretary-General to continue to provide all necessary support to the open-ended working group, within existing resources.” (A/c.3/66/L.13/Rev.1). In accordance with this decision, it is expected that the OEWG will hold its next meeting on August 2012.

While at the UN level the OEWG is still struggling with the question as to whether there is a need or a justification for a new convention, some regional organizations and agencies have moved forward much quicker. The most startling and promising advancement was made in this area at the OAS – Organization of American States. The General Assembly, through its resolution AG/RES. 2654 (XLI-O/11), “Protecting the Human Rights of Older Persons,” adopted at the fourth plenary session on June 7, 2011, resolved, in operative paragraph 1, the following:

To request the Permanent Council to establish a working group composed of national representatives and experts from the academic sector and civil society, as well as from international organizations and specialized agencies, to prepare a report by the end of 2011, analyzing the situation of older persons in the hemisphere and the effectiveness of binding universal and regional human rights

instruments with regard to protection of the rights of older persons.

Following this decision, a working group was indeed established, and in October 21, 2011 it submitted the following working plan:

... the Working Group's tasks will be split into two clear stages. In the first stage, "by end 2011," a detailed report is required containing a diagnostic assessment of the situation of older persons in the region along with an analysis of the 'effectiveness' of the regional or universal binding instruments on the human rights of older persons.

In the second stage, which is supposed to last no longer than "the end of the first half of 2012," the Working Group is to achieve a draft Inter-American Convention on the rights of older persons for submission to the Permanent Council, so that that body can initiate the corresponding process of negotiation.

If indeed the OAS Working Group will stand up to its own working plan, this region will be expecting to see the first draft of a new Inter-American Convention on the rights of older person by the end of June 2012.

However, OAS and Latin American countries were not alone in their attempt to move forward much quicker than the UN pace. The AU – African Union also moved forward very quickly on this front. Starting in 2007, the African Commission on Human and Peoples' Rights, in a meeting held in Brazzaville, Republic of Congo, decided to establish a Focal Point on the Rights of Elderly Persons in Africa and to appoint a Commissioner to coordinate the Focal Point (ACHPR/Res.118 (XXXXII)). This Focal Point was later transformed into a Working Group on the Rights of Older Persons and Persons with Disabilities in 2009 (ACHPR/Res.143 (XXXXV) 09). Amongst others, a primary role of this working group was "spearheading the process of drafting a Protocol on the Rights of Older Persons for submission to the AU Policy Organs for consideration and adoption as soon as possible." A preliminary Draft Protocol was presented to the African Commission during the 48th session held in 2010 in Banjul, Gambia, and this process was supposed to be completed by the end of 2011 (and at the time of the writing of this article, this draft was not publicly available yet).

While both of these regional initiatives have not yet been finalized, and there is no formal draft of a regional convention or protocol on the scene, it can be speculated that if indeed both the OAS and the AU continue to move at this pace, it is only a matter of months until a concrete proposal will be presented for debate and potentially, adoption. Hence, at least at this stage, it seems that the UN process is somewhat 'left behind' compared to the international regional levels, in actually developing a unique and specific human rights instrument (a hard law which is binding) specifically tailored and aimed at the rights of older persons.

### **Part C: Where are we going to?**

From the landscape outlined above, it is clear that we live and work in dynamic times. At the UN level, there is an OEWG which will meet again in August 2012, and the global political struggles will continue to take place as the opposing voices will strain to reach some kind of compromise. At the regional level, both in the Americas and in Africa, it is expected that significant progress will be made with presenting a new protocol or instrument in this field.

Yet, on both the UN level as well as the regional level, the debate about the need for the new convention, as well as the debate about its actual content, shape and form, will continue, and likely even intensify. The general map of the existing debate around the need for a new convention for the rights of older persons has been provided in two scholarly articles (Doron and Apter 2010)a and (Doron and Apter 2010)b. The arguments presented in these articles will not be fully repeated here, but the key points will be presented in short.

It seems that the existing opposition to a new convention is anchored in two key arguments: (1) From past experience, international conventions do not make a real difference, and sometimes even make things worse; (2) Specifically in the field of older persons' rights, there is no need for an international convention in light of the wealth of existing international documents. More specifically, the opponents argue that not only do international human rights conventions create 'artificial' equality, they are also blind to multi-culturalism. They ignore specific traditions and beliefs, and may ignore long-established unique social norms. If one does believe that international HR instruments are important, then one really only needs to implement existing HR tools. Finally, if indeed MIPAA is taken seriously

and implemented properly by signatories, there will be no need for any new international convention.

On the other hand, those who support a new convention anchor their position on two key premises: (1) The existing international law situation is not good enough; (2) The international convention is an important and effective legal tool to promote and advance the social position of older persons in the future. In support, academics from all disciplines and sectors rely on scholarly writings and assessments that point to the success of existing international conventions, such as the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) or the Convention on the Rights of the Child (CRC), in making a difference in the lives of women and children across the world. Evidence also suggests that these conventions have become powerful advocacy, educational and empowerment tools. A full assessment of the above arguments has been provided in the reported scholarly articles. However, in this article, three new points are to be made in the context of evaluating where we are going to in the future.

### **The soft law paradox: when success is a failure**

We argue that the success of developing soft law may be the reason for failure. One of the unique dimensions of the rights of older persons on the international arena is the wealth of “soft law” in this field. Compared with other minority or disenfranchised groups such as women or children, advocates for and older persons themselves have been very successful in developing not only various soft law instruments but substantive and meaningful ones. One needs only to read MIPAA to realize that if the policy goals and aspirations of this Plan were fulfilled, there will indeed be no need for a new binding HR convention.

However, reality and evidence proves that soft law is not enough. Firstly, a previously stated soft law is not binding. It does not provide an efficient legal remedy for older persons who are being failed, on a daily basis, by their governments. Secondly, it seems that to date, MIPAA has not fulfilled its promise and intention to make a significant difference in the lives of older persons around the world. However, most importantly, MIPAA can and may already be a “fig leaf” to conceal the actual abandonment and neglect of older persons while signatories wave the flag of support for MIPAA.



## The proliferation of human rights and its price

“Timing” is crucial. The struggle for a new HR convention is being conducted against a reality where significant groups, e.g. women and children have established conventions. Furthermore, it is still a very recent event that a totally new and quite novel, new HR instruments have been established with regard to persons with disabilities (CRPD, 2006), which also includes various material issues that directly relate to rights of older persons (e.g. accessibility; capacity; dignity). There is some underlying sense from members of the global community that “we need some rest” or “we have already too much” or “let’s first work on what we have before we move on”.

In addition to the general international atmosphere of “there is too much already”, voices of disappointment are growing in size and volume from international HR in general. Once again, there are some who argue that international HR conventions are a façade to the continuation of harsh and gross infringements of human rights. Some of the worst regimes in the world were the first to sign and ratify various HR instrument (McGinnis and Somin 2009). There is a growing critique regarding the ability of international HR to fulfill its promise in actually making a difference in the lives of people around the globe (Hafner-Burton and Tsutsui 2007) (Hathaway 2002).

Finally, we are living today in times of not only significant economic pressures and crisis, but also in an era of uncertainty and instability in various parts of the world. Many governments around the world are unwilling to commit to new HR instruments which may entail future costs or economic expansions. Limited resources and growing pressures on existing social programs, make it much harder to commit to legal obligations which may hinder the ability to further cut down social expenses (Hathaway 2003).

As with earlier point of view, these contextual arguments are very serious. We can limit our comments on this point by reminding ourselves that despite the critique of HR violations, there is still a strong understanding and agreement that HR are a major tool to protect and promote human dignity in general. Without international HR binding instruments, unequivocally, the lives of many people, especially those who are poor, excluded in minority social groups, will even be worse. One may agree that international HR are not perfect

and that we can work hard to improve existing tools or shape the future convention better than those that exist. However, this does not necessarily lead to the conclusion that we need to abandon HR instruments all together (Steiner, Alston, & Goodman, 2008).

*...opponents argue that not only do international human rights conventions create ‘artificial’ equality, they are also blind to multi-culturalism.*

## Ageism and identity-politics of old age

Finally, we would like to touch upon the politics of old age, and the politics of identity. We argue that the resistance to a new convention is actually another expression of ageism. Using Prof. Nancy Fraser’s terminology (Fraser 2008), social justice is not only about distributive justice or social rights. It is also about “identity politics”, and about social recognition and participation. The movement for a new and unique convention on rights of older persons is part of a much broader social-justice movement for political recognition of older persons as a unique social group, with unique social identity. This group seeks social recognition, respect and dignity. A new convention is part of that political struggle, for both cultural and symbolic change: overcoming a reality in which both nations and the international community ignores the right of older persons to be recognized in and by themselves.

Hence, the only way to overcome this resistance is a power struggle. The tussle is exposing the discrimination, prejudice, and stereotypes against (and in favor) of older persons. It is the hard, grass roots struggle of NGOs around the world to expose not only the poverty and abuse, and the social exclusion the older persons all over the world face on a daily basis. It is also their (and our) responsibility to reveal and expose the hypocrisy of the governments who try to deny this reality or elude themselves and their societies that older people have more political power in Ageing societies, or that older people are no different than others (Tepe and Vanhuyse 2008).

## Conclusion: time for action

The authors of this article believe that there is a real need for a new convention for the rights of older persons. This is not an “intuition” or a mere “thought.” Strong evidence already exists to support this argument, as exemplified both by scholarly writings and expert group recommendations. The opposition for the new convention is, in our view, an outcome and a representation of a political reality: a reality in which ageism, and its denial, still exists on national and international levels. This evaluation does not, by itself, change the existing reality. It does however, and should, send a clear message to NGOs around the world: the challenge is in our hands. If the older persons’ rights community is successful in “manufacturing” the grass roots political power, and a sufficient sense of urgency and need, then their national representatives at the UN level will act accordingly and support a new HR convention.

**Dr. Israel (Issi) Doron**

Senior Lecturer,  
Department of Gerontology, University of Haifa  
President of Israel Gerontological Society (IGS), Israel  
*idoron@univ.haifa.ac.il*

**Benny Spanier**

Ph.D. Student,  
Faculty of Law, University of Haifa, Israel  
*benny19@netvision.net.il*

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# Older women in developing countries

Older women in developing countries often experience age-related problems which are similar to their counterparts in developed countries. But with older women in rural areas remaining the poorest of the poor, and the discrimination they experience largely invisible, *Ferdous Ara Begum* explores this most neglected of all human rights issues.



**T**oday the size of the global ageing population is increasing at a much more rapid rate than expected. Due to declines in fertility and rising longevity, the world is ageing at an ever increasing pace. At present, more than half of the world's women aged 60 years and over are living in developing regions; 198 million compared with 135 million in the developed regions. The percentage of older women living in developing regions will grow dramatically by 2050, since two-thirds of the women in the age group 45-59 currently live in developing countries as compared with only one third in the developed countries. The number of older women living in less-developed regions will rise by 600 million between the years 2010 to 2050.

## Economic and social dimension of demographic ageing

This demographic shift poses a major challenge for developing countries in terms of resources mobilization, policy formulation and budget allocation. Population ageing is now more than just a demographic issue – it is a social and economic issue. Addressing the demographic challenges in both developed and developing countries requires different approaches depending on the socio-economic factors. In developed regions, older persons are mostly concentrated in cities, but in the developing countries in Asia and Africa, a higher percentage of older people live in rural areas, mostly in multi-generational households.

## Lack of access to basic rights

While older women in developing countries experience many of the age-related problems as their counterparts in developed countries, limited access to basic needs and services such as food, shelter, legal and health needs place them at a greater disadvantage. Older women present the most neglected of all human rights issues with the discrimination they experience often remaining invisible. Older women from rural areas remain the poorest of the poor.

In addition, very few developing countries have legislation prohibiting discrimination based on age and gender in all areas including employment, elder abuse or health

care. National policies on gender equality and non-discrimination rarely include the issues of older women. In many countries, ageism and age discrimination continue to be tolerated and accepted at the individual, institutional and policy level.

### **Disadvantaged by policy manipulation**

The vast majority of older women in all developing countries are worse off now than before due to structural adjustment policies of the governments which require cutting back on food and healthcare subsidies, increasing the burdens already shouldered by disadvantaged people including older women and their families. Additionally, food security is threatened by free trade policies that dictate food be produced for trade rather than domestic consumption. Instead of reforming public healthcare and its delivery, profit maximization policy has resulted in the rapid privatization of healthcare and the decline of government facilities which serve poor women and their children, including older women. High energy prices in the domestic sector are also responsible for high costs of transportation, electricity, potable water, good sanitation systems etc., which are essentials for women ageing with dignity, but made costlier and less accessible for most older women in rural settings.

### **Negative stereotyping and discrimination**

Violations of the rights of older women often based on negative stereotyping and deep-rooted cultural and social bias, and traditional harmful practices can be manifested in various forms of elder abuse and violence. In the 47th Session of the CEDAW Committee, HELPAGE International submitted parallel reports on the discrimination against older women regarding the act of violence and witchcraft allegation against older women in Burkina Faso, and displaced older women in Northern Uganda.

Although older women often play a crucial role as caregivers and parent substitutes in families affected by economic migration or the HIV/AIDS, but these important contributions often go unrecognized and undervalued. UN Secretary General Ban Ki-Moon said on the occasion of Older Person's Day in October 2010, "In those countries hardest hit by the AIDS pandemic, it is always grandparents who are left to care for AIDS orphans. In Sub-Saharan Africa 20% of rural women aged 60 or older are sole caregivers of their grandchildren."

*Older women present the most neglected of all human rights issues with the discrimination they experience often remaining invisible.*

Widowhood and divorce also exacerbate discrimination towards older women, especially in rural areas. Older women experiencing armed conflict, or affected by climate change or natural disaster often face severe neglect and denial of their rights to basic services. It is reported, in the recent earthquake in Japan and recent devastating floods in Pakistan, many older women were the victims of the disaster and failed to get adequate support from the Government or NGOs.

### **General recommendation No 27**

To create a more comprehensive mechanism for the protection of human rights of older women, the CEDAW Committee adopted the General Recommendation No 27, on the protection of Human Rights of Older Women, which is a remarkable protection strategy **with state obligation** that addresses all aspects that affect the life of older women both in developed or in developing countries, in rural areas or in urban slums, in the areas of conflicts or in the situation of natural disasters. It would also give older women and their rights a greater visibility and priority amongst States Parties, NGO's and the wider UN Human Rights System.

It addresses all the key issues including universal access to all social services, increasing number and amounts of social pensions, enacting laws and policies that prevent age and gender-based discrimination in all walks of life including discrimination in the work place, access to health needs and education. It also addresses the feminization of poverty and the need to ensure that every older woman has the right to have a dignified, productive and healthy life.

### **Recognition before the law**

The States Parties have the obligation under Article 2 of the CEDAW Convention to abolish or modify existing laws, regulation and customs which discriminate against older women. Prohibition of discrimination is one of the

pillars of International Human Rights law. States Parties should adopt gender-sensitive and age-specific policies and measures to ensure that older women participate fully and effectively in the political, social, economic, cultural, civil and all other fields in their societies. Older women and widows need to be protected from property grabbing, inheritance and ownership of property.

### Protection from violence and abuse

States Parties have an obligation to enact laws on domestic violence, sexual violence and violence in institutional settings against older women, including women with disabilities, and prosecute and punish all acts of violence against them as per general recommendation 19 of the Convention.

When considering sexual violence, State Parties should give due consideration to older women in armed conflict, stateless women, refugee women and asylum seekers and provide assistance and support as per UN Security Council Resolution 1325 and 1820.

### Right to health

States Parties should adopt a comprehensive health policy for the protection of health needs of older women as stated in General Recommendation 24 of the Convention. This should ensure affordable and accessible healthcare and include interventions promoting behavioral and lifestyle changes to delay onset of health problems. In China, morning exercise with music in parks and gardens are very popular among elderly people.

Policy actions and resource allocation are important in the areas of long-term health and social care, training of healthcare workers in geriatric illness and palliative care. France has a separate ministry for older persons. Elderly health care is a high priority issue of the government.

Right to work, Social Security and adequate housing

States parties have an obligation to facilitate the participation of older women in paid work without

facing any discrimination based on their age and sex. States Parties should ensure that they are not forced into early retirement and not discriminated against receiving pension benefits. States Parties should also monitor the impact of gender pay gaps on older women.

Regarding the right to have adequate housing, priority in the allocation of housing and land should be ensured to disadvantaged groups such as the older people and persons with disabilities. States Parties also should protect older women against forced evictions and homelessness.

### Poverty and marginalization

Poverty of older women in rural areas has been a major concern, which can be effectively addressed through non-contributory pensions and compensation for their years of unpaid and inadequately paid work.

States Parties should provide collateral free micro-credit to older women and should provide affordable transportation to enable older women to participate in economic and social life, including community activities. States Parties also should provide affordable water, electricity and other utilities to older women so that they may have a better life.

### Right to hold public office

Older women should have access to hold public office at all levels in decision making positions, and they should have the necessary documentation to register to vote and run as candidates for election.

**Ferdous Ara Begum, MPA (Harvard)**

Gender Issues Specialist

Former Member of UN CEDAW Committee & Chair,  
Working Group for CEDAW General Recommendation  
on Rights of Older Women

Former Director General, Bangladesh Television

*www.ferdous.info*

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## Voices from the front: Europe

### Time for action

**D**iscrimination on grounds of age is perceived as justified and legitimate says *Jan Jařab* as he questions when the rights of older citizens might finally be treated as a priority.

The Universal Declaration of Human Rights, drafted and adopted in 1948, lays down rights which belong to “everyone”. Yet more than six decades later, even the most advanced societies in the world, such as those of the EU Member States, still seem to be struggling with the appropriate interpretation of that word. Policy makers, opinion makers and large sectors of the general public often act as if this term covers only adult citizens of “working age” who are gainfully employed, or only those who have no disability.

Older people are among those who still face a major challenge in asserting that the term “everyone” in the Universal Declaration includes them as well. Elder abuse and neglect, although identified in the last few decades as a real problem, remains largely invisible – whether it happens within a family or within a care institution. The lack of community-based services which forces some older people into institutional care, often against their will, is still rarely seen by policy makers as an important issue, let alone as one involving human rights. In many EU countries, institutional care is seen as “perhaps not ideal but good enough”, even if the older persons themselves would have different preferences.

All too often, discrimination on grounds of age is perceived as justified and legitimate. To some extent this is the result of an individual’s perceived “worth” being consciously or subconsciously linked by others to their current economic performance, real or imagined. Widespread age-related prejudices in the workplace affect persons who are in fact only middle-aged, in their 50s. True, we increasingly see persons in their 60s and 70s who remain economically or socially active (and some, indeed, hold positions of power). But persons in the oldest age bracket (80+) are often dealt with - not just by individuals, but by whole systems - in ways which would be seen as clearly unacceptable if they involved younger subjects, for instance in access to health care.

Involuntary admission to healthcare facilities and consent to treatment are among the many examples. In cases of involuntary admission of younger persons with a mental health diagnosis, the system automatically sets in motion a procedure involving the judiciary which should at least theoretically guarantee that the individual's view is heard. But there are quite a few countries in Europe where the involuntary admission or treatment of a frail older person does not, as a rule, even set a similar procedure in motion. Professionals feel confident to decide whether or not the person is to be admitted, treated or discharged. A decision that someone "cannot" be discharged because they would require support from services at home which are not available - which amounts to *de facto* detention - is usually not the product of a judicial deliberation, but a top-down decision of the health and social services, based on "necessity". The role of the older person's own views and preferences are often relegated to a distant second place.

Just like persons with disabilities (including psychosocial and intellectual disabilities), older persons must be treated as active subjects, as rights-holders, and not just as passive objects of "care" who have no choice but to accept the only form of care available. It is important that they are always treated as adults, even where a cognitive deficit is present. In fact, the issue of cognitive deficit is one of those on which prejudice and discrimination against older persons plays out most often. Many older persons are mistakenly labeled as suffering from dementia - even by health professionals. Specialized geriatricians can tell of many cases of older persons misdiagnosed as demented while they were in fact anemic, dehydrated, or suffering from an infection. But even where a serious cognitive deficit is indeed present, the person should be treated with dignity... and as an adult, not infantilized.

Moreover, there are areas on which international human rights law has been silent so far - such as the issue of obligatory retirement age. Even the otherwise progressive European directive on equal treatment in the workplace (2000/78/EC), which protects against discrimination on grounds of age in the workplace, is "without prejudice" to national rules on retirement. Is it fair? Everyone should, of course, have the *right* to retire; but it is not at all clear why, for instance, brilliant professors in their 70s and even 80s, admired by their

students, should be *forced* to leave the work they love (or tremble whether a young university administrator, who has none of their qualities, will graciously renew their contract for another year).

*Older persons must be treated as active subjects, as rights-holders, and not just as passive objects of "care" who have no choice.*

The international human rights community is finally waking up to the issue of human rights of older people. The Open-Ended Working Group on the Rights of Older People, composed of representatives of UN Member States, is deliberating in New York on how human rights of older people can be strengthened in practice. The creation of a new UN Convention specifically for the rights of older persons is one of the possibilities (although there is no unanimity in that regard). A new Convention would certainly have the benefit of highlighting the importance of the rights of older persons, and helping to prevent them from being forgotten once again. But whether or not a new Convention comes into being, it is clear that the human rights of older persons need to be recognized as a priority.

To address a number of real-life problems in the area of human rights of older persons, we will need to mobilize all possible synergies between senior citizens' organizations, broader civil society (to keep an inter-generational dimension) and international human rights mechanisms. There can be little doubt that the issue of ensuring full enjoyment of human rights for older persons represents one of the most important tasks for the international human rights movement in the 21st century.

**Jan Jařab**

Regional Representative for Europe of the UN High Commissioner for Human Rights

## Dr Alexandre Kalache speaks out

*Alex Kalache is Senior Advisor to the President on Global Ageing at the New York Academy of Medicine, a former Director of the World Health Organization: Programme on Ageing and Life Course and a HelpAge International (HAI) Global Ambassador on Ageing.*



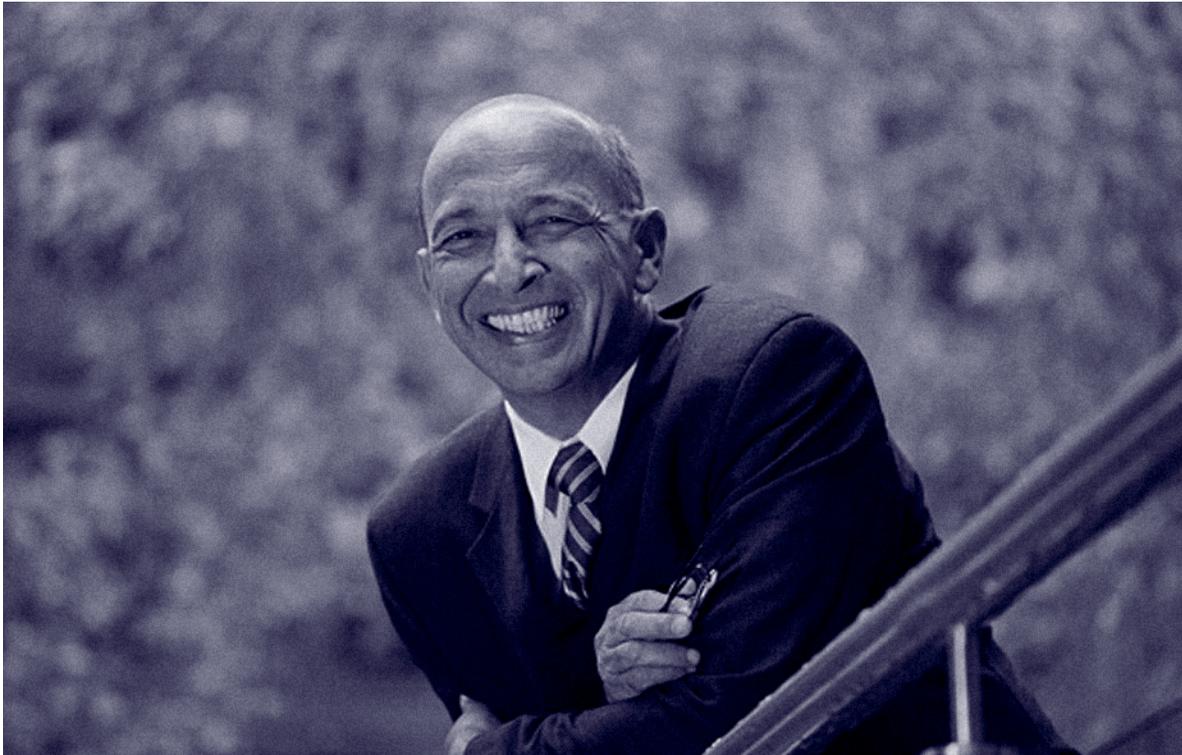
**I**n this interview, IFA Director, *Dr Liz Mestheneos*, asks his views on why rights for older people matter so much.

**Liz M:** You have, in so much of your working life, been passionately involved with the issue of ageing and have continued your campaigns to ensure that older people are treated well and are part of modern societies. You worked at WHO, Geneva, in the Department concerned with Ageing and thus were part of the UN institutions. Now you are more independent and can speak freely – though I think you always did!

**Alex:** Indeed I am enjoying speaking my mind. In my youth I fought against the dictatorship in Brazil and I think this attitude of fighting for democratic rights has stayed with me and I now use it to fight for older people. I was lucky in my career in working and leading the WHO programme on Ageing for 13 years and I had wonderful experiences. But now that I am no longer employed by very expensive international organizations that have spent ludicrous amounts on the ageing programme, I can be more effective and speak my mind working in and through civil society organizations. So I am now involved with many and with the foundation of the new Brazilian International Longevity Centre.

**Liz:** Many organizations are pushing for a UN Charter on the Rights of Older People. Are not older people covered by the original 1948 UN Charter on general Human Rights of all people? Or in the case of those with disabilities, by the Charter on the Rights of people with disabilities? Is it even a good thing to separate the human rights of older people from the rest of the population?

**Alex:** No. Older Persons' rights are not automatically covered by the Bill of Rights which are Universal - let alone by the Convention on the Rights of People with Disabilities.



Alex Kalache is Senior Advisor to the President on Global Ageing at the New York Academy of Medicine.

Starting with the latter, neither older people want or like to be equated with disabilities, nor those with disabilities want their situation to be mixed up with older age. The issues are sometimes superimposed, but often different in nature. When you are denied access to services because you are old (education, social/health services); when you are discriminated against at work - even denied a job because you are too old; when you see yourself caricatured in the media as “passé”, “gaga”, a target for stereotyped jokes; when society treats you with disdain because you “have nothing to contribute”; when you are abused for being old, frail, vulnerable... none of this has anything to do with being disabled - it is sheer lack of respect, a denial of your dignity as an individual and goes straight to the core of your identity. And the Universal Declaration of Human Rights does not even mention old age - let alone rights as we age.

No we deserve better - not only principles or vague assumptions that we are covered. We deserve specificity because at the basis of the infringement of our rights is AGE DISCRIMINATION, negative and patronizing attitudes, and disrespect.

Furthermore, there is still a passive attitude by most of those who have already reached old age - conforming to the roles imposed on them by society, inherited from millennia before them.

I think this situation will change rapidly - and I will tell you why: the coming generations of older persons particularly in Northern and Central Europe, in North America, though not only in these countries, have attained higher educational levels, have a past of activism, are not passive. We, the baby boomers have transformed and changed every stage of life we have been through. We grew up in relative wealth and peace (the wars that we fought were in other lands) and baby boomers in developed countries are extremely influential in making public opinion.

We were educated. We transformed society. We created the social construct of adolescence (before us there was an abrupt transit from childhood into adulthood) ...then came us. The sexual revolution, the emancipation and participation of women in the paid work force, 1968 and the Beatles, the fashions...I think we are now going to create another transition, another revolution:

from ADULTHOOD INTO AAAAAAAAAAAAAAGEING - like that, much more prolonged than the few years adolescence should last (despite the way some behave as eternal adolescents.)

I can see this in my own country, Brazil where life expectancy has gone from 43 when I was born to 75 now. And this phenomenon, of so many people surviving into old age is universal. And attitudes are changing in countries like Brazil, India and China. One can see the massive shift occurring in attitudes and the demand in democratic countries for the human rights of older people.

While the more advanced countries are the leaders in this revolution, we can see that there is a move in the developing countries. Thus in the four Latin America countries of Argentina, Brazil, Chile and Uruguay, which share similar cultures and were all plagued by histories of dictatorship and the fight for democracy, the generation which fought against dictatorship and for democracy is now in power – whether in politics, the media, academia, and they have a strong commitment to the human rights of the older generation. It is these four which are leading the attempt by Member governments at the UN for a Charter of Rights.

*We deserve specificity because at the basis of the infringement of our rights is AGE DISCRIMINATION, negative and patronizing attitudes, and disrespect.*

This is not an imposition from above but a movement from the grass roots. 10 days ago in November 2011 I was in Brasilia for the 3rd meeting on the Rights of Older people, a process that began at municipal levels in small meetings and conferences. Older people felt their rights were being ignored and they started generating resolutions, electing representatives to take these to State and Federal levels, in a very transparent way.

What is critical is that they are acting on their own behalf to push for legislation in the fields of health, services and pensions and their rights to have access to all these. They feel that up until now they have been excluded, neglected and abandoned and they want to fully participate via their empowerment - that includes also such things as transport and entertainment or employment and training.

**Liz:** What effective methods exist to ensure that any of the Charters are actually implemented.

**Alex:** I think the role of civil society is critical – the grass roots movements need support at regional and national levels by the NGOs who will see if what is recommended becomes part of policy and practice. This monitoring role is vital; we have to make sure that existing legislation is implemented.

I can see how this works in Brazil where there are two important landmarks in the Constitution and legislation: first that in 1988 which sees health as a universal right – prior to this it was based on philanthropy for the poor: The second law, ten years ago, saw the introduction of universal pensions; both laws change the position of older people and empower them. This is upheld by the civil organizations. Of course, allowing these rights to be exercised allows older people to continue playing a vital role in their families and is more independent and allows them to exercise their rights. This is, of course, is something, which is more easily done, in democratic systems. One can hardly ask for the rights of older people to be respected if no one else's rights are acknowledged either.

**Liz:** What is your “vision” for past, current and future endeavors by NGOs like IFA or HAI?

**Alex:** Democracy has to be fought for. This period in history is an important one for older people and our international civil society organizations play a coordinating, stimulating and supportive role in ensuring that older people worldwide are treated better and their human rights acknowledged everywhere.

## Voices from the front: India

Rural ageing programs are urgently required to redress the isolation and poverty of India's older citizens says *Dr Vinod Shah*



**I**n the 20th century we saw a revolution in longevity. In India, the average life span could increase by twenty years and will be 76 years in 2050. The fastest growing segment of the older population will be above 80 years, while the population of 60+ years persons will be 350 million in 2050. Such staggering growth of the elderly will bring enormous social and economic problems in its wake and if our national and state policies don't measure up to this enormity, the basic human rights of the elderly will be jeopardized.

Human Rights of the elderly protect values including dignity, independence, self-fulfillment, participation and care. It should be noted that fundamental human rights do not diminish with age. But marginalization and disabilities brought about by old age may put older persons at risk of losing their rights and being rejected by society, unless these rights are clearly identified and safeguarded. The need to bring into focus the human rights of the elderly therefore arises because many communities or countries with older persons throughout the world lack access to the necessary financial, social and health infrastructure to address the issues of population ageing. Older persons cannot meet their responsibilities unless these rights are guaranteed legally and enforced duly.

The Madrid International Plan of Action on Ageing (MIPAA) in 2002 spelt out the commitment of the governments to address the challenges and opportunities of ageing in the 21st century with a view to eliminate all forms of ageism or discrimination against the elderly. The rights of the elderly have evolved all over the world over the course of the last two decades. The UN Declaration of the Fundamental Human Rights and its acceptance by all Member States is the basic foundation.

Since the majority of old people live in rural areas in India, we should give due priority and appropriate attention to rural ageing programs. The difficulties we come across are mainly illiteracy, ill health, poverty and abuse of the elderly, resulting in a higher old dependency ratio for rural populations. The continuing migration of the younger age group to urban areas in search of jobs further worsens this picture. Poor transport and communication facilities, inadequate infrastructure including roads, inadequate power supply, almost total lack of sanitation and unsatisfactory supply of safe drinking water

all contribute to poor quality of life and high morbidity rates. Research studies undertaken by Janaseva Foundation in a large rural population reveal that most of the elderly from rural areas live in isolation, loneliness, poverty and ill health. Often there is considerable despondency and many programs designed to benefit the rural elderly hardly address the core of the problem facing them.

*Often there is considerable despondency and many programs designed to benefit the rural elderly hardly address the core of the problem facing them.*

## Gender issues

The Human Rights of older females are in serious jeopardy today. Rural societies are commonly male dominated and isolation of aged women and their emotional problems are increasing rapidly due to their lack of social support, poverty and dependence. A study by the AgeWell Foundation reveals that 66% are harassed and abused, mainly by their own family members and 43.9% of older women are living in inhumane conditions. About 70% of women don't have any savings, with about 90% unaware of their rights. Even those who are aware are often not in a position to seek justice, and this leads to considerable suffering. *The maintenance and welfare of parents and senior citizens Act 2007* by the central and state governments has hardly addressed this problem. By and large, women live longer in India – most are widows; so there is age-related discrimination and a majority of widows remain neglected.

Thousands of widows find shelter in various temples, homes for the aged and many others are homeless. Though some widows belong to affluent or middle-class families, they can still be denied their rights to inheritance, and subjected to eviction, violence, property grabbing, et al.

There are about 33 million widows in India, comprising nearly 8 per cent of the total female population of the country. According to UN statistics, the number of elderly women and widows in India will reach 198

million persons aged 60 or over in 2020, and 326 million in 2050.

There are many Constitutional Acts in India including the 498A, *Domestic Violence Act* formed and implemented in good faith to protect women. Unfortunately, their own children and/or daughters-in-law can still take advantage of these women.

## Financial support

It is surprising that 86% of older women are not covered by Pension Benefits. Nearly 28% (13 million) of the salaried workforce and approximately 268 million workers in the unorganised sector (including farmers, shopkeepers, professionals, taxi-drivers, casual / contract labourers, etc.) are not covered by the pension provisions.

## Welfare schemes and facilities

According to the Reserve Bank of India regulation, people aged 60 years or above will get one-half percent extra interest on their deposits. A number of banks have also introduced special loan schemes for senior citizens with low interest rates, such as the personal loan scheme for 'pensioners' to meet immediate requirements such as medical expenses. Many nationalised banks have also introduced a reverse mortgage scheme.

## National old age pension scheme

Central assistance to provide old age pension to an elderly is available to an applicant who is destitute. The amount of the old-age pension is different in different states. The scheme has been implemented in the state and union territories through *panchayats* and municipalities.

## Health care for elderly

About 27 million elderly would be ill at any given point of time in a year and thus need specialized medical care. In the absence of such medical facilities, large expenditures on infrastructure would be required to meet their needs. The occurrence of physical disabilities is another important aspect of the aging process. There will be about 20 million disabled elderly persons in India in 2011 and many of them will need institutionalized services e.g. Old Age Homes, Day Care Centres.

## Available schemes and facilities

### (i) *Annapoorna Scheme*

This scheme, instituted by the Government of India, provides for free-food-grain (upto 10 kg per month) to destitute older persons who are otherwise eligible for an old age pension under the National old-age pension scheme, but are not receiving it and whose children are not residing with them.

### (ii) *Concessions Available in Transport*

*Trains:* The Indian Railways provides 30% concession in all classes and trains for citizens aged 60 years and above.

*Airlines:* Most flights offer 50% discount on Domestic Flights to senior citizens aged 65 years and over.

## Provision for old age life annuities

The Life Insurance Corporation of India offers an assured income in the form of annuities. A life annuity is a contract with an insurance company which pays an agreed amount periodically, as long as the beneficiary of the annuity is alive. Guaranteed payment for a minimum number of years and for life thereafter can be a variation of such a contract.

## Programs

The National Social Assistance Program (NSAP) which came into effect from 15th August, 1995 was a significant step towards the fulfilment of the Directive Principles in Article 41 and 42 of the Constitution. It introduces a National Policy for Social Assistance benefit to poor households in the case of old age, death of the primary breadwinner, or the birth of a child.

## National policy – 12th five-year plan

The proposed program of the XII National Plan of India has suggested the following schemes for the welfare of senior citizens.

- Integrated Program for Older Persons.
- National Institute of Social Defense.
- Assistance for establishment of old age homes for Indigent Senior Citizens.
- Establishment of a National Centre in New Delhi for those older persons suffering from dementia and mental disorders.
- Economic Empowerment of Elders – income generation skills, production of simple consumer products, computer skills, Centre for Economic Empowerment of Elders to be set up.
- Health Insurance.
- National Helpline for elders.
- Protection of life and property and increased sensitivity to the needs and rights of the elderly.
- Concessions, incentives, benefits and facilities.
- Strengthening of Regional Resource and Training Centres.
- Care Giving Modules – Basic, Certificate in Personal Care Giving, Certificate in Home Care Giving.

*Many problems silently destroy older peoples' lives, health, dignity, safety, emotional feelings and, in a nutshell, destroy their human rights.*

Some of the goals enshrined under the National Policy are:

- to encourage individuals to make provisions for their own as well as for their spouse's old age;
- to encourage families to take care of their older family members;
- to enable and support voluntary and non-governmental organizations to supplement the care provided by the family with greater emphasis on non-institutional care;
- to provide care and protection to the vulnerable elderly especially widows, the frail, handicapped, abused and destitute elderly;
- to provide health care facilities especially suited to the elderly;
- to promote research and training facilities to train geriatric care givers and organizers of services for the elderly;
- to continually evaluate and upgrade existing services and programs for older people, to facilitate and strengthen inter-sectoral partnerships in the field, and
- to create awareness on how older persons can equip themselves to become fully independent citizens.

Many problems silently destroy older people's lives, health, dignity, safety, emotions and, in a nutshell, their human rights. This reality leads to the paramount responsibility of the Indian Government to offer a safety net with the appropriate social services for older people.

*Though some widows belong to affluent or middle-class families, they can still be denied their rights to inheritance, and subjected to eviction, violence, property grabbing, et al.*

### Legal safeguards to older persons in India

Article 41 of the Indian Constitution states, "The state shall within its limits of economic capacity and development make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want". This provision is one of the Directive Principles of State Policy, which are considered fundamental to the good governance of the country and, "It shall be the duty of the state to apply these principles in making Law" (Article 37). In addition, Section 125 of the *Code of Criminal Procedure, 1973*, makes it incumbent for a person having sufficient means to care for his father or mother who are unable to care for themselves. The *Hindu Adoption and Maintenance Act 1956*, also recognizes the obligation of a person to care for his / her aged or infirm parent(s) [Section 30]. The *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* reinforces this obligation and expands the scope to include any person who shall inherit the property of the older person. It also simplifies the process to get redress and impose punishment in case of abandonment.

There is a gap between what exists on paper and what is actually available. Furthermore, how much actually reaches the elderly? From that perspective, we in India have a long way to go, especially in rural areas, to create a better life for elderly widows. So to achieve due justice for senior citizens in India, various stakeholders including government organizations,

semi-governmental organizations, universities, NGOs, senior citizens organizations, social workers, gerontologists and geriatricians will need to work together make their lives active, healthy, meaningful and enjoyable.

**Dr Vinod Shah, MD**

Director, IFA

Member, Steering Committee on

Ageing of Planning Commission of India

Chairman, Janaseva Foundation

## Working towards rights

Australia's recently appointed Age Discrimination Commissioner, *Susan Ryan*, shares her challenges and priorities in the fight for rights.



**I**n July 2011, the Australian government announced my appointment as the first full-time Age Discrimination Commissioner, at the Australian Human Rights Commission. This was a historic step. While Commissioners for Older Persons existed in Wales and in Northern Ireland, in terms of a national age discrimination-specific position, internationally, it seemed this was the first of its kind.

With an issue of such global importance, it surprised me that so few countries had taken formal, structural steps to ensure that these issues were given ongoing consideration. With the world witnessing a massive shift in the ageing demographic, this shift is central to the long-term view of any country's economic and social infrastructure needs. Yet, to varying degrees, most countries are lagging behind this reality.

The demographic changes in Australia parallel those in other developed countries. Between 2007 and 2056, the proportion of people aged 65 years and over is projected to almost double from 13 to between 23 and 25%, the proportion of people aged 85 years and over is likely to triple from 1.6 to between 4.9 and 7.3%, and the median age will rise from 36.8 to between 41.9 and 45.2 years (ABS, 2008).

There are more older people now than ever before – a great testament to our improved health outcomes. Yet, too often I hear people worldwide describe this situation as a 'burden'. This negative labelling reveals broader ageist attitudes that are deeply entrenched within our societies – attitudes that have a detrimental impact on the basic human rights of older people. As Age Discrimination Commissioner, part of my role is to expose attitudes that lead to discrimination against older people, and to change them.

In Australia, the government has taken significant steps toward safeguarding the rights of older people.

In 2004, the Age Discrimination Act was introduced as the country's primary protection against unlawful age discrimination. Its ongoing application in the community not only aims to eliminate unlawful age discrimination, but also promotes awareness that all people have the same fundamental rights regardless of age.

Recently, the Act was amended to create the office of a dedicated full time Age Discrimination Commissioner, providing an important structural measure to protect

the rights of vulnerable age groups (both older and younger) through targeted education and advocacy (AHRC, 2010). Under the Act, the Commissioner's responsibilities include raising awareness on discrimination throughout the community and the economy, and informing the community of the redress available under the Commission's complaints process (AHRC, 2010).

The Commission's complaints process is a key feature of rights protection in Australia. The ways in which individuals can make a complaint of age discrimination are set out under the Age Discrimination Act. The grounds for a complaint cover a number of areas of public life including employment, education, accommodation, access to premises, goods, services and facilities, and the administration of Commonwealth laws and programs. A central part of my role involves raising awareness about what age discrimination is, how it affects individuals in relation to jobs and basic services, and how people can use the complaints process to protect and enforce their rights.

Foremost among the problems brought to the Commission's attention, and borne out in our complaints statistics, is the decreased ability of older people to participate in the workforce. In the last two years, the majority of age discrimination complaints were in the area of employment. Of these, the majority were made on the basis of being judged "too old". In response to these facts and other supporting data from national sources, I have made employment a priority within my action program.

Despite the protections offered since 2004 by the Act, the data on employment discrimination illustrates the persistence of ageist attitudes. A structural lag within the policy environment and employer practice allows these negative attitudes to persist.

Individuals report their experiences of discriminatory attitudes across all aspects of employment to the Commission. In the recruitment context, we hear of job advertisements seeking applicants who are 'young and dynamic' and practices of culling applications of 'anyone over the age of 40 years'. Barely disguising their discriminatory purpose, human resource managers ask candidates, 'what year did you graduate' or 'how old are your children'.

People also report being denied access to training and promotional opportunities, or being targeted by restructuring practices and forced to take redundancy.

Employees are intimidated from asking for flexible work arrangements. They are all too aware of negative attitudes towards the unpaid caring responsibilities of older workers, which could be for parents, spouses, adult children, siblings or grandchildren. We hear stories of age-based bullying and isolation being tolerated, or worse, supported within the workplace environment.

*Barely disguising their discriminatory purpose, human resource managers ask candidates, 'What year did you graduate?'*

These accounts reveal that entrenched age discrimination is manifesting in negative stereotypes of older workers and older people generally. I plan to develop both community-wide and employer-specific strategies to tackle these attitudes. It also seems urgent to remind the wider community of the realities of the positive lives of older people. To assist in this objective, I recently launched an on-line 'Age Positive' initiative. I have invited people from anywhere in Australia to send in stories, with photos, of older people doing positive things: in their communities as volunteers, in the workforce, in the arts or with their families. Some of the stories have attracted the attention of mainstream media, and in this way, reached a wider audience. The stories are already correcting negative stereotypes and reminding the Australian public how much older people contribute to our community.

In addition to dealing with negative stereotypes, older workers face a number of structural barriers. Despite strong government policies and specific programs to support older workers continuing in employment, damaging age bars are still in place in some Australian laws and policies.

The 'mandatory retirement age' was mostly abolished in Australia with the introduction of the Age Discrimination Act. However, the continued use of age bars can be seen in laws and policies that fall outside the protections of the Act, effectively imposing a de facto 'retirement age'.

In most jurisdictions in Australia, workers compensation laws, which cover workplace injuries, provide zero or limited cover for people approaching and over the age of 65 (SafeWork, 2011). Similarly, income protection insurance, essential for the self-employed, is only available to people up to the age of 65, and premiums generally increase with age (Ratesonline, 2011). Thus, employees and people running their own businesses beyond 65, in the case of illness or injury, are left without income replacement.

Australian superannuation law currently contains an age limit of 70 years on compulsory employer superannuation contributions, currently 9% of the employees' earnings. After sustained advocacy against this age bar from sector advocates and myself as Commissioner, the Government decided to abolish this age cap, although, it will remain in place until July 2013. This decision represents a significant step towards age equality and sends a strong message to the community and to employers, but there is still a long way to go.

To deal with these legal barriers on a systematic basis, I have called for a general audit of all Australian Commonwealth laws and policies that contain age bars. The audit would show whether these official age bars, often in place without review for many years, are still producing the intended policy outcome, and if these outcomes are consistent with overarching public policy. Overarching government policy now reflects deep awareness of Australia's current skills shortages across most sectors. It will, I expect, emerge that these age bars actually obstruct other policy aimed at maintaining

workers with in-demand skills. This is unlikely to be situation specific to Australia. Across global economies, there will be a need to examine similar barriers to the full participation of older workers.

*Part of my role is to expose attitudes that lead to discrimination against older people, and to change them.*

Domestically, initiatives can draw support from advocacy for increased protections at the international level. NGO's such as the International Federation of Ageing are leading the way. Additionally, the Australian Human Rights Commission believes that agreed international instruments would improve the recognition and protection of the human rights of older people.

As an international community, we must change to recognise the new realities of older people and 'ageing'. We need to act together to get the attitudinal, structural and legal changes necessary to ensure that all people, regardless of age, live free from discrimination with their human rights respected and upheld.

**Susan Ryan**

Age Discrimination Commissioner  
Australian Human Rights Commission  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

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## Looking ahead in the European Union



**D**iscussing the social inclusion of older people may seem a rather provocative issue given that for centuries, when life expectancy was low, older people had to remain with their families in rural, conservative societies. The ever more rapid ageing of the population noticeable in the past two decades, leading to larger proportions of older people in the population, has generated new questions about their roles and status in modern society compared to other age-groups.

When the needs of older people grow, they can easily feel excluded from daily life because of their lower financial resources. Thus a significant proportion cannot live on their pensions and have to resort to subsistence through social grants/help. The current economic crisis is seeing this category of older people increase in most EU countries. Public measures need to be taken and a common strategy developed in order to allow people to retire with dignity, an essential condition if someone is to remain an active citizen.

However the ageing challenge has to face new forms of dependency requiring vital care and support. Not every EU health system is universal or with adequate and good quality coverage, and increasingly men and women choose not to seek treatment. Budget imperatives increase the gap payments, forcing people to forego care or to turn to what can be expensive complementary systems. When health becomes a luxury, one can argue that human rights of citizens are violated, an intolerable assessment that the relatively wealthy EU Member States need to correct by doing everything in their power not to ignore vulnerable social groups, especially the frail elderly.

Home remains an intimate place holding memories weaved throughout a lifetime – for people old and young. However, older people staying in place can be risky and lead to isolation and solitude, especially when means are lacking to adapt the home to support different forms of dependency, and when families are scattered or separated.

Modern society depends highly on new communication technologies. However for many older people, learning how to use these new technologies is a real challenge. Intergenerational exchanges of knowledge remain too rare while there is no systematic long-term education system enabling the learning process to continue throughout

life. Even older people with the will to remain intellectually active can quickly feel overwhelmed and then give up, if not supported by some kind of specific teaching program.

Ageing requires a minimum of preparation and organization. If one hasn't planned this transition, then the risks of isolation and loss of social networks are bound to be higher: this leads to a loss of sociability (family, friends), a lack of resources, bad health, and home and neighborhood environments that no longer correspond to older people's needs.

The European Union has developed a ten-year strategy plan aiming at preventing the marginalization of older citizens through active inclusion during the whole life course, and the adaptation of existing social protection systems that favor more vulnerable groups. Member States are currently producing national reform programs which hopefully will enact all these intentions. However, it is of paramount importance for citizens of every age to remind decision makers at all levels of these priorities. Human rights and marginalization are not compatible.

**Jean-Pierre Bultez**

*jean-pierre.bultez@club-internet.fr*

## How to advocate

A global conversation is taking place on the rights of older people that has the potential to put ageing at the forefront of international policy. *Ken Bluestone* considers the role civil society organisations can play to strengthen the rights of older people globally.

### The need for a convention

**T**he UN has convened an Open-Ended Working Group (OEWG) to discuss specifically how to strengthen the rights of older people.

Human rights are widely accepted as being universal, but the experience of the past 60 years has shown that existing international human rights treaties offer little protection for older people. The blanket coverage offered by the international human rights system has not met the specific needs of older people globally.

Our understanding of human rights, however, is not static. Over the years, UN Member States have found it necessary to supplement the Universal Declaration of Human Rights with subsequent treaties that deepen our understanding of human rights towards specific groups, including: women, children and people with disabilities. These treaties, now accepted as features of the human rights landscape, were not immediately recognised as being necessary and were hard fought for. They have demonstrated that the international human rights system is strengthened by greater clarity and activism.

Where the rights of older people are concerned, the landscape is shifting once more and the time has come to put a Convention on the Rights of Older Persons firmly on the global agenda.

### The importance of civil society

Protecting the rights of older people cannot happen without the full involvement of civil society. Strong civil society activism is essential for generating the political support to make a Convention possible and, crucially, for putting international agreements into practice:

- Governments need to hear from older people and the organisations working with them to understand the human rights issues older people are facing.
- Governments need to know that their citizens want them to get involved in the global discussion on the rights of older people, and support the establishment of a Convention.

- Older people need to understand their rights and demand action from their Governments to put policy into practice at local and national levels.

*What's on the Agenda for 2012?*

## **OEWG**

The main opportunity for strengthening the rights of older people globally is through the UN's Open Ended Working Group that meets in New York. A positive outcome from the process though, is far from guaranteed.

The third meeting of the OEWG will take place in August 2012 and there is a danger the discussion will be dominated by a growing rift between Member States on whether a Convention is necessary.

The OEWG also faces the challenge of getting Member States from all regions to participate. Without this active engagement, the talks could flounder, pushing the rights of older people even further down the UN's list of priorities.

## **Special rapporteur**

In addition to a Convention, Member States are also considering a Special Rapporteur as a means of strengthening the rights of older people. A Special Rapporteur could make an important contribution, but must not delay the development of other human rights instruments such as a Convention. The decision to establish a Special Rapporteur is made by the UN's Human Rights Council.

## **MIPAA**

2012 is also the ten-year anniversary of the Madrid International Plan of Action on Ageing (MIPAA), and Member States have been reviewing their implementation of the plan. This is creating various opportunities at national and regional levels for civil society organisations to raise awareness of the rights of older people and the need for new instruments such as a Convention.

## **Generating national interest**

It is vital for civil society organisations to send a clear message to all Governments to get involved with the OEWG. In order for the OEWG to continue with its mandate, it needs the active involvement of Governments from all regions. Of particular concern is the need to strengthen participation from Africa and Asia.

It is also necessary to encourage a wider range of Member States' views in the OEWG, especially from European countries where the greatest resistance to a Convention has emerged. Full support for a Convention may not be possible yet, but it is vital that Member States continue the dialogue through the OEWG.

Civil society organisations should get involved by taking the following specific actions:

- Get your Government to attend the August 2012 OEWG meeting and engage them in dialogue on the rights of older people.
- Raise awareness of the need for a Convention and strengthening the rights of older people through a Special Rapporteur at every opportunity in 2012 – MIPAA review, World Health Day, European Year of Active Ageing and Solidarity Between Generations.
- Start a national debate to strengthen understanding of the rights of older people.

## **The global alliance for the rights of older people**

Established in 2011, the Global Alliance for the Rights of Older People was born out of the need to strengthen the rights and voice of older people globally. The Alliance supports the creation of new international and regional human rights instruments, including a Convention and a Special Rapporteur, as powerful tools for strengthening the rights of older people.

The Global Alliance for the Rights of Older People fully supports the efforts of UN Member States to look more closely at how to strengthen the rights of older people globally. We believe that for this process to be meaningful, older people themselves must be fully involved in voicing their own concerns, and we are working actively to encourage UN Member States to work towards a Convention.

**Ken Bluestone**

The Global Alliance for the Rights of Older People  
*info@rightsalliance.org*

## MORE

For further information about strengthening the rights of older people globally:

The Global Alliance for the Rights of Older People:

**[www.rightsalliance.org](http://www.rightsalliance.org)**

Strengthening Older People's Rights: Towards a UN Convention:

**<http://www.rightsalliance.org/index.php/en/component/content/article/85-strengthening-older-peoples-rights>**

The Open-Ended Working Group:

**<http://social.un.org/ageing-working-group/>**

All International Human Rights Instruments:

**[www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx)**

# The rights of older people 'in care'

Patient-centered care offers a new way of understanding – and delivering – care, which will support the rights of older adults, argues *Dr. William Smith*.



The United Nations today is on the frontlines of some of the most critical places in the world. As an American, I am energized and encouraged by the support of other Americans on Global issues. We truly are a “Global Community.”

The United States can be proud of many of the programs and services which have been established in our country through the years, as witnessed by the Social Security Program, Older American’s Act, Disability Initiatives, Medicaid, Medicare and CLASS [The Community Living Assistance Services and Support Act] to mention just a few. These programs and others have been set up as examples to other countries. These programs oversee, fund to some extent and allow for care to be provided to older persons in our country. We must never lose sight of the fact that millions of older Americans rely on these programs each and every day. Older persons are frequently the ones identified as being the foundation of our country, but in the twilight of their years, are frequently overlooked due to the many competing demands that governments must address, as is their responsibility. There are many in our country who would say that older persons have “paid their dues” and are “entitled” to the services afforded by these programs. Unfortunately “entitlement” has been a word with many negative overtones.

As state budgets throughout the United States have been diminished as a result of economic factors, the loss of state revenue has caused a renewed focus on the very programs that mean so much to the older American. Medicaid in many states has become the single largest expenditure for legislators and as a result the focus of proposed “cut-backs.” What governments have to realize is that reduction in funding does result in reduction of services for older persons, many of whom are frail and vulnerable.

I would argue that older persons in our country as well as other developed and developing countries have a human right to proper care, especially as their chronic condition deteriorates through aging or as a situation is accentuated through an acute spell of illness. Prevention, intervention and innovation are all necessary for countries to consider. Informal support system provided by family and caregivers should be encouraged, but also needs to be nourished and in some cases incentivized. Governments could never afford to fund all the care that older people

require through a formal array of services in the twilight of their years.

Many older persons are surviving through the support of the informal support system provided by family members, neighbors and friends, but at some point, a more structured formal provider of service needs to be ready to accept the older person who can no longer reside independently, even with the support of family, neighbors or with friends. Older people need a place to live in order to receive services to sustain themselves into old age.

*All countries should have the courage to turn their health care system on its head and reorganize it around patients' health-related goals.*

When using the term “Older Persons” it might be better to assign that descriptive category to the oldest 15 per cent of a population, since many developing countries have a very different perception and reality of the aging process and define aging according to their culture. Yet the oldest 15% of a population is likely to be the most at risk and in need of service or support. Be mindful that older persons can continue to provide much needed service to a country too, as has been witnessed by intergenerational support as well as being producers and purchasers in our economies. This is in addition to their qualitative importance and impact such as wisdom, history, life experience and keepers of tradition and culture.

Dr. Robyn Stone in her recent book *Long-Term Care For The Elderly*, (2011) notes that several factors will influence the future demand for long-term care. These include the aging of the population, disability rate projections, the availability of family caregivers, the financial status of future cohorts of elderly individuals, and the ethnic and racial composition of this population in the future.

Older persons have a Human Right to care. The AARP Public Policy Institute recently reported on the “Increased Demand and Decreased Funding” for

Adult Protective Services. Financial exploitation and neglect are factors which only get compounded by “self-neglect” in which older people, in the judgment of others, are thought to be neglecting their own needs and putting themselves at high risk of harm. This is yet another complication and rationale for advocating for the provision of care as a human right for older people.

For the past several years, there has been a focus on “Patient Centered Care.” This is an attempt to change the delivery of service and the overall culture of how care is provided to the older person. Keeping the focus on the patient or person needing the care is a fundamental goal that all countries can model. It was suggested by Dr. Mary Jane Koren in her testimony before the U.S. House of Representative Committee on Appropriations that the United States, and by extension, all countries should have the courage to turn their healthcare system on its head and reorganize it around patients' health-related goals. We should begin immediately to ensure that people can enter old age in better health, with their chronic conditions better controlled as a result of improving the quality of their life during their earlier adult years. Only when countries give long-term care policy a much higher priority in the national debate will we see care as a human right for older persons – one that will become a reality in the global community.

**William T. Smith, Ph.D.**

President/Chief Executive Officer  
Aging in America, Inc.

IAHSA's main representative to the United Nations  
[williamtsmith@aiamsh.org](mailto:williamtsmith@aiamsh.org)

## A tribute to Robert Binstock



Robert Binstock

It is with profound sorrow that I report to devoted readers of *Global Ageing* and members of the IFA network the sad news of the death of Robert Binstock—friend, colleague, fellow member of the *Global Ageing* Editorial Board. He was a wise counselor and advisor to me as we prepared issues of *Global Ageing*.

Bob was a truly remarkable person, dedicated to his students and colleagues and to bringing well-researched findings to policy development and advocacy. A giant among gerontologists, he was widely read and greatly appreciated as a scholar, teacher and leader.

His search for evidence to undergird his publications was unrelenting; he refused to remain silent, as myths about ageing became the basis for poor policies in the United States. His wit, wisdom, and focus on developing sound policies affecting older people, as well as their families, were celebrated by many groups who selected Bob for their highest awards.

His leadership and informed perspective will be missed. Fortunately, he profoundly influenced colleagues and students to advance the sciences of gerontology and promote policies that assist and enhance the lives of people of all ages. As we remember and celebrate Bob for his gifts and contributions, we must go forward to achieve vital elements of the Global Ageing agenda.

**James T. Sykes**

Fullbright Scholar  
Past Editor of *Global Ageing*  
and  
Senior Advisor for Aging Policy,  
Population Health Sciences,  
University of Wisconsin  
*jtsykes@wisc.edu*

## Voices from the front: the view from Brazil

Brazil's Statute for the Elderly sets out to guarantee the well-being of the elderly, yet there is still much work to be done, suggest *Lucia França* and *Daizy Stepansky*.



The Brazilian social policies for the elderly population, and challenges for the coming decades, should be contextualized within the country's recent history. In developed countries, the ageing population followed social welfare implementation and economic development. In Brazil, rapid demographic change came simultaneously with structural transformations: industrialization, urbanization and globalization.

Life expectancy in Brazil is approximately 74 years, and the 22 million elderly Brazilians represent 11.3% of the entire population. The Brazilian population is going through what is known to demographics as “*a demographic bonus*”: the economically active portion of the population is growing, while the total dependent rate is declining, due to a reduction in the number of children between 0 to 14 years in relation to that of 15 to 64 years, which would make the economy more dynamic, if these people were given both education and professional skills.

The 1988 Brazilian Federal Constitution integrated Social Security benefits, health-care and welfare making welfare universal for all – “*for those who need it*” – regardless of previous contribution. It also recognizes the advances of the International Plan of Action on Ageing adopted by the World Assembly on Ageing, held in Vienna, 1982, by creating space for organizations and elderly councils who should guarantee fully the rights of the elderly. National Policy for the Elderly was promulgated (Law 8842) in 1994, through successive meetings by the representatives of the elderly, social organizations, researchers and technicians.

The Second World Assembly on Aging, Madrid, 2002, strengthened the National Policy for the Elderly, leading to the Statute for the Elderly (Law 10.741) promulgated in 2003, asserting the obligation of the family, community, society and Public Authorities in guaranteeing the right of the aged to life, health, food, education, culture, sports, leisure, dignity, respect and life within the family and community.

The Brazilian social policies also incorporate Active Ageing, proposed by the World Health Organization at the Second World Assembly: autonomy, independence and quality of life, from effective inclusion into life in society. Coordination and management of the National Policy for the Elderly is handled at present by the Ministry for Social



Development and Fight Against Hunger. In 2002, the National Council for the Elderly was instituted in the states, Federal District and town councils.

The Statute for the Elderly guarantees that people of 60 and over receive, free and universal, special care from the National Health Service (SUS); (3%) of units in public habitation, or subsidies from public resources; prohibits discrimination against hiring elderly people and institutes retirement preparation programs; guarantees 50% discount for cultural, sporting and leisure activities; free public urban transportation; guarantees places on Intercity and Interstate public transportation. Furthermore, it guarantees the permanent right to education, recognizing the need to preserve memory and culture through participation of the elderly in social and intergenerational activities; production of information about the elderly population; priority in judicial proceedings; and the creation of specialized governmental agencies for specific needs such as police stations for elderly victims.

Making these conquests effective through public authorities, rather than formulation of new rights, is the present social policy challenge for the Brazilian

*The Brazilian population is going through what is known to demographics as “a demographic bonus”: the economically active portion of the population is growing, while the total dependent rate is declining.*

elderly. The number of welfare beneficiaries has greatly increased – more than 80% of the elderly, presently, receive some form of benefit, yet the pension provided by the Welfare System in general is not adjusted in the way that it should be, making the upkeep of pensioners a problem, most of whom need to continue working to support themselves. The number of retirement preparation programs is not significant nor does the Brazilian culture appreciate its worth, it was only a short while ago this was a country of young people that had not envisaged growing old so fast.

Care for the elderly has not been satisfactorily addressed, either by family or by professionals. The Institutions of Long-Term Care for the Elderly – ILPI – lack definite concepts with respect to care. Other proposals for day-care centers and convivial centers - are yet incipient. Permanent education for the elderly has been stimulated and developed by innumerable open universities throughout the country, yet the overall low level of education of the elderly has limited its participation.

The Statute for the Elderly is a legal document that intends to guarantee the well being of the elderly in its multi-disciplinary totality. However, it is of utmost importance that the Statute is more extensively divulged, together with research and campaigns about prejudice against the elderly citizen – ageism. It is also necessary to monitor and assess the Statute through joint efforts among the representatives from government, professionals, institutions and representatives of the older folks themselves with regard to its effectiveness and efficacy. The elderly is a shy public actor; their participation in public administrative policies is still not significant, even though it is guaranteed by law.

**Lucia Helena Franca**

Psychologist and Gerontologist, Ph.D.,  
The University of Auckland (NZ)  
Associate Professor of Graduate Studies in Psychology  
UNIVERSO - Salgado de Oliveira University  
– Rio de Janeiro  
Author, researcher and consultant in  
Gerontology & Retirement Preparation Programs  
*luciafranca@luciafranca.com*

**Daizy Valmorbida Stepansky**

Sociologist, Doctor in Communication,  
Federal University of Rio de Janeiro - UFRJ.  
Associate Professor at  
Federal Fluminense University (UFF)  
Researcher and author of several studies  
towards Ageing in Brazilian Society  
*daizystepansky@gmail.com*

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## Income and social security: *a universal right?*

Is social security a right or an entitlement for older people?  
*Dalmer Hoskins predicts a new impetus in this debate with the newly released Bachelet Report*



The long-awaited and much-anticipated report by an expert group, headed by Michelle Bachelet, former President of Chile and currently UN Under-Secretary-General, was published by the International Labor Office (ILO) at the end of 2011. The Report constitutes an attempt by the United Nations and two of its specialized agencies, the ILO and the World Health Organization (WHO), to rethink the future direction of social protection policies, particularly old-age protection, implemented at the national level, and to provide fresh impetus to the UN's social development policies beyond the goals fixed in the Millennium Development Goals (MDGs).<sup>1</sup> The Report will also inevitably reignite the debate about whether social security protection should be viewed as a right which covers all citizens when faced with certain risks (old-age, sickness, unemployment, etc.) or rather an entitlement granted in exchange for previous contributions or other eligibility requirements (means tests, asset tests, etc.)

### Background of the report

The expert group, chaired by Michelle Bachelet, was convened by the ILO (with the collaboration of WHO) in August 2010, in response to the mandate it was given by the United Nations System Chief Executives Board (CEB). The Report has been released at a time when the completion by 2015 of MDG targets for the elimination of poverty around the world is rapidly moving back into the timeframe of the world leaders who adopted the MDG benchmarks in the year 2000. The Bachelet Report therefore represents a contribution to the debate about the lessons learned from the MDG initiative and whether new policy orientations are needed to alleviate world poverty. It also constitutes, in the opinion of many observers, an endorsement of a more rights-based approach to social protection, including income security for older persons.

A rights-based approach is not new to the United Nations or to social security policymakers around the world. In fact, social security is cited in the Universal Declaration of Human Rights (Article 22), adopted by the United Nations in 1948, and then more explicitly as one of the fundamental rights contained in the International Covenant on Economic, Social and Cultural Rights adopted in 1966 and ratified by over 160

countries around the world. However, the Covenant also recognizes the “principle of progressive realization”, which has proved to be particularly evident with respect to the extension of social security coverage. The ILO estimates that at present, only one in five workers is protected by an old-age income security program, whether contributory or non-contributory. While social security coverage of the working population has become more or less universal in most of the OECD countries, the coverage gaps are significant and even growing in many developing countries. With large numbers of the working population remaining in the rural and informal sectors of the economy, it is not unusual for only 15-20% of the total labor force to be protected by an old-age pension program.

Moreover, the Report reaches the conclusion that income inequality is widening almost everywhere in the world, but most particularly in those countries, including the OECD countries, negatively affected by the economic downturn since 2008. It strongly asserts that economic development does not necessarily translate at the national level to lower poverty rates.

The Social Floor Initiative therefore encourages Member States to take a more integrated and coordinated approach to social protection by putting in place policies that link job promotion, education, health and income security in favor of the most vulnerable categories of the population. To date, poverty alleviation in many countries has been characterized by “vertical expansion”, i.e. social insurance programs often reach

*However, the challenge to governments is to find the “fiscal space” which would permit them to fund new protection or reallocate existing expenditures. The most important obstacle in most of the world’s countries is the inadequate capacity to collect taxes*

### **Emphasis on the “Social Floor” approach:**

The Report presents a strong argument in favor of the introduction by each country of a minimum guarantee for all citizens in two broad areas:

- basic income security, in the form of various social transfers (in cash or in kind), such as pensions for the elderly and persons with disabilities, child benefits, income support benefits in the event of unemployment, as well as employment guarantees and vocational training to promote employment;
- universal access to essential social services in the areas of health, water and sanitation, education, food security, housing and others to be defined according to national priorities.

The argument in favor of a minimum guarantee of both income security and social services is backed up by the assessment that while global GDP has increased 260 percent per capita since 1950 when the Universal Declaration of Human Rights was adopted by the United Nations, poverty has persisted in all regions of the world, both in the OECD countries and elsewhere.

only a minority percentage of the working population in the formal sector of the economy. While there was some optimism that the developing world would follow the model of the older industrialized countries by gradually expanding social insurance coverage to the majority of the labor force, experience has demonstrated that this has not been the case. Governments should therefore devote more efforts to the “horizontal” extension of coverage by providing income security and social services to previously uncovered citizens.

### **The shift away from needs-based entitlements to social protection rights**

It is noteworthy that the Report asserts that the social protection floor approach differs substantially from the notion of social safety nets promoted by many governments and the international financial institutions since the late 1980s and 1990s. Generally speaking, the safety net approach considered that social protection policies were residual to economic development and were usually temporary and targeted to the most vulnerable in a needs-based framework. The logic of the social safety



net approach was that the poor needed help to cushion the effects of economic restructuring. In contrast, the social floor approach stresses the need to shift from a needs-based approach to a rights-based approach, with guaranteed basic social rights as a precondition for citizenship.

The Report provides brief background information on a number of national initiatives which it judges to fit the new rights-based approach, including Argentina's universal child allowance, Brazil's Bolsa Familia conditional cash transfers to low-income workers and their dependents, South Africa's Old Persons Grant which reaches practically the entire elder population and India's rural employment guarantee program which may well be the world's largest rights-based social protection initiative, reaching about 53 million households.

### **New emphasis on integrated and coordinated national protection policies**

Social protection in most countries is administered by a multitude of different government institutions, each operating within its separate sphere, including the ministry of health, social security, labor ministry, welfare ministry, etc. The Social Floor Initiative argues in favor of more integrated planning and delivery by breaking down the institutional barriers. The key to success in this regard is better data on the living situation of

populations, diverting public resources to those categories of the population which most lack access to health, education or income security in their old age. The approach would entail the use of 'social protection audits' which would help governments to prioritize the implementation of social protection policies and quite possibly shift current spending from the less needy to the more needy.

### **Issues of debate**

#### **Is it affordable?**

The Report concedes that the current environment of fiscal restraint, necessitated in most countries by the worldwide economic recession, is not the easiest time to introduce new thinking about social rights. However, the Report provides estimations for a series of countries on how much it would cost governments to cover the unprotected for access to health, family benefits or old-age pensions. Depending on the lower estimates for Africa (2-3 per cent of GDP) to higher estimates for the more developed Asian and Latin American economies (4-5 percent), the assertion is that the social floor approach *is* affordable. However, the challenge to governments is to find the "fiscal space" which would permit them to fund new protection or reallocate existing expenditures. The most important obstacle in most

of the world's countries is the inadequate capacity to collect taxes, either consumption taxes or income taxes. It is thus readily conceded that without the political will to enforce revenue-enhancing policies, there is little long-term chance for achieving universal protection for minimum social guarantees. On the more positive side, the Report points out that where the political will exists, programs can be adopted and financed within relatively short time frames (e.g., universal old-age pensions in many Mexican cities, universal old-age pensions in the Philippines and Kosovo) rather than following the more gradual development paths of the older industrialized countries.

### **Institutional capacity**

The report concedes that the introduction of new social protection measures without adequate attention to the capacity to deliver the benefits will prove costly and politically damaging. The issue is particularly difficult in those countries which have existing social insurance and social service programs which serve only part of the population, but in almost all cases, the better-off, urban and politically influential segment of the population. A striking illustration of the problem occurs when old-age pension programs have been in existence for decades, covering a minority of the total working force, but receiving sizeable implicit and explicit subsidies from the national government. How would these existing social insurance programs be coordinated with more universal tax-financed old-age benefits? Can the existing social security institutions be used to extend coverage to non-covered populations? At what level should old-age benefits, both non-contributory and contributory, be fixed to avoid disincentives to continue to work?

The Bachelet Report does not attempt to provide definitive answers to the many questions raised by its recommendations, but it will undoubtedly serve as an important reference point for the ongoing debate on how to alleviate poverty around the world. It will also focus attention on the long-standing issue of how to cover the vast majority of populations who do not yet have any access to old-age income security. What will be the place of the old social insurance model, adopted

*The issue is particularly difficult in those countries which have existing social insurance and social service programs which serve only part of the population ... the better-off, urban and politically influential segment*

by many countries following independence, but still limited in coverage of both the formal and informal sectors of the economy? How will long-standing social security programs in some OECD countries respond to the prospect of growing poverty among the elderly as future pension benefits are reduced? Will the political momentum swing in favor of the introduction of universal old-age pension benefits for the entire population? Promising models recently introduced are already working in Brazil, Bolivia, Chile and South Africa, as well as in countries with older universal systems – Australia, Canada and New Zealand. Will universal old-age benefits be paid to all older persons reaching a specified age or will they be targeted to the most economically vulnerable among the elderly? Will the right to social security enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights be realized for a growing number of the world's elderly, or will these rights remain on the slow path to “progressive realization”?

**Dalmer Hoskins**

Director of the Division of Program Studies in the  
Office of Research, Statistics and Evaluation of the U.S.  
Social Security Administration  
*[dalmerhoskins@gmail.com](mailto:dalmerhoskins@gmail.com)*

### NOTES

1 Social Protection Floor for a Fair and Inclusive Globalization (International Labor Office, Geneva, 2011).

## Voices from the front: *Ireland*

Our physical, social and cultural environment has a huge impact on how well we live. Often getting the little things right makes the most gains. But, says *Anne Connolly*, it takes a deep understanding of their importance, by planners and service providers, for this to happen.



**A**s we age, the role we play in society can often be limited more by cultural norms and assumptions than by any reduction in ability. It is assumed that capacity inevitably diminishes with age, that the ability to live independently reduces, or that the contribution to society ends when we reach retirement age. These cultural assumptions manifest in well-intentioned social policies which seek to ‘problematise’ later life and to see older people as a vulnerable group to be taken care of.

Changes in longevity, health and patterns of employment mean that a large cohort of the older population will remain active and healthy for longer, and will have the potential to provide significant benefits to their communities from their accumulated life skills and experience. While a small minority, (5-10%) are frail and in need of support, the vast majority are healthy, active and wishing to play a recognised and valued role in addressing many of the more intractable social problems and revitalising the communities in which they live.

The Age-friendly Counties programme in Ireland seeks to challenge these cultural assumptions and to view older people as a resource, not a burden. They have a lifetime of talent and expertise which, with the appropriate approach can be deployed for the benefit of the wider society. They have earned the right to have their needs recognised and their contribution valued and we, as a society, need to develop innovative ways of tapping into this valuable resource for the benefit of all. The challenge is to develop the structures and supports which will encourage older people to become new role models for succeeding generations by remaining fully engaged in their communities.

### Thinking behind ‘age friendly communities’

Where people live, the physical, social and cultural environment, impacts hugely upon how they live. This is true for people of all ages, but particularly so for older people. Quite often, it is the small things that can easily be got right that matter, but it requires a deep understanding of their importance by planners, service providers and others.

An ‘age-friendly’ community recognises that a range of factors influence the extent to which older people experience a good quality of life and can be active in the social,

cultural and economic life of their neighbourhoods. Small things like outdoor areas that provide benches and places to stop and watch, like transport services that link people with health services as well as commercial outlets, like good lighting to promote greater feelings of safety can all make a difference to feelings of belonging and social connection.

*These cultural assumptions manifest in well-intentioned social policies which seek to ‘problematise’ later life*

Statutory agencies, service providers and others can work in partnership to align and mutually reinforce their support, avoid important gaps and wasteful duplication. Practical examples abound. Health service providers, including hospitals can liaise with transport providers to ensure buses stop outside health centres and hospitals. Care providers can turn to older people’s voluntary organisations to provide important outreach and other support. Local Authorities can liaise better with the health services to make home adaptation grants available in time so older citizens don’t have to stay in hospital when they are medically fit for discharge. Services provided by statutory, private and voluntary organisations can be augmented and enhanced by the contribution of older volunteers. Older people’s organisations can play an important role in implementing many of the changes needed.

An age-friendly community benefits people of all ages. Secure neighbourhoods are safe for children, youth, women and older adults. Families experience less worry and stress when their older relations have the services and support they need. Barrier-free buildings and streets enhance the mobility and independence of both younger and older persons with disabilities. The whole community benefits from the participation of older persons in volunteer or paid work and civic activities. Making counties age-friendly is one of the most effective policy approaches for responding to demographic ageing.

**Anne Connolly**

Executive Director

Ageing Well Network 16/17 College Green, Dublin 2

[anne@ageingwellnetwork.ie](mailto:anne@ageingwellnetwork.ie)

[www.ageingwellnetwork.ie](http://www.ageingwellnetwork.ie)

#### **MORE**

For further information on the Age-Friendly Counties programme in Ireland see <http://afcireland.com>

## An intergenerational perspective

Violations against older people create the critical “gaps” that a universal convention on the human rights of older persons (a Convention) can bridge, argues *Bethany Brown*.



**A**s a lawyer, I think about older people’s human rights with the same sense of conviction that any advocate feels when faced with systemic injustice. As a person currently on the younger end of the age spectrum, I am advocating for a group that I am becoming a part of, day by day. Human rights make human dignity concrete with a set of norms, principles and standards. Human rights formally define the thresholds that identify situations in which human dignity is threatened or violated.<sup>1</sup> The current state of the international human rights framework fails to recognize violations against older people.

At this moment, in countries around the world, the rights of older people are being violated without legal condemnation: an older person is being legally dismissed from formal employment based on his or her age; an older man is contracting HIV because of exclusionary health education; an older widow is being driven out of her own home; and a grandmother or grandfather is not reporting being beaten at home because physical abuse of an older person is not a crime in some countries, so laws provide no protection. These violations are wrong. They affect millions of older people from all walks of life, who have no legal recourse. In many places, social norms dictate that violations like these are not even given a second thought; they are just part of life. These are the critical “gaps” that a universal convention on the human rights of older persons (a Convention) can bridge.

“Gaps”, or wrongs with no legal right, are evidence of the need for a comprehensive and targeted legal and institutional framework. There are different ways to frame this reasoning:

- **The Numbers:** In the coming decades, the number of older people in the world is projected to double, and eighty percent will live in developing countries. The challenges faced by current populations of older persons will be exacerbated by this rapid population growth and the resulting competition for limited resources. Without clear protections from a Convention or targeted protection regime in place, older people are likely to face increasingly severe violations of their rights.

- **Invisibility:** Older people are not expressly recognized in existing human rights conventions. There is no coherent set of minimum standards of human rights protections which are clear and enforceable, ensuring older persons' participation and accountability. A convention would incentivize governments to recognize older people in collecting disaggregated data, ensuring participation, accessibility, and planning for their specific needs.

*Such disempowerment makes growing old hard and demeaning, and watching this process makes younger people want to distance themselves from it.*

- **The transformative process of drafting a convention:** The process of building support and negotiating a protection regime can create momentum to improve the lives of older people by creating new social norms

and legal support across the life-course. A Convention could transform what it means to be older; it provides an avenue for access to justice, equality and non-discrimination.

For any of these reasons and more, a Convention would build a sustainable system for creating inter-generational support. Cumulatively, human rights violations against older people affect society at all ages. Such disempowerment makes growing old hard and demeaning, and watching this process makes younger people want to distance themselves from it. Distancing through the construction of older people as somehow different or “other” helps to make discrimination seem acceptable. It makes it easier to ignore the fact that older people’s fate is our fate.

Generations working together inclusively toward a Convention can be an innovative and powerful force for change. Being “older” is not a zero sum proposition; we each inhabit the continuum of age, and access to rights in old age concerns everyone alive and ageing today.

**Bethany Brown, JD**

Policy Director, HelpAge USA

## MORE

HelpAge USA is part of a global network focused on the rapidly aging population in poverty. It empowers older people with a human rights-based approach to development, and seeks to strengthen their access to their rights. HelpAge USA is advocating for an international legal framework at the United Nations to better protect the older people it works for and with.

Learn more about human rights, older people, and HelpAge at [www.helpageusa.org](http://www.helpageusa.org).

## NOTES

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## Voices from the front: from Pakistan to Belize

2012 is an important year for rights of older people, says *Bridget Sleep*, but this work cannot advance unless we listen carefully to what is being said.



### Listening to older people

“**W**e older people need to get up and let the authorities know how we feel; many times, we keep quiet and suffer in silence. We have to stop that foolishness and get up and let our voices be heard.” An older woman, 69, Belize.

*Listening to the voices of older women and men has never been more important.*

2012 is a critical year for the rights of older people. This year the Organization of American States is drafting a regional, Inter-American convention on the rights of older people. The drafting of a protocol on older people’s rights to the African Charter of Human and Peoples’ Rights is also due to be completed.

And at the international level, the Open-ended Working Group on Ageing, the first and only UN Member State forum dedicated to identifying gaps in the protection of older people’s rights under existing human rights law and discussing the need for new instruments to fill these gaps, will hold its third substantive meeting in the summer.

*They should be listening carefully to what older people have to say.*

Older women and men have been campaigning for their rights as part of the Age Demands Action (ADA) campaign since 2007. In 2011 an estimated 70,000 older women and men in 59 countries from Albania to Zimbabwe stood up and demanded that their rights be protected.

This is what they had to say.

*They called for an end to age discrimination.*

As Fazal Shah from Pakistan said, “The state must take practical measures to solve older persons’ issues and to eliminate discrimination against them.”

An older person in Uganda explained what this discrimination can look like: “Banks are not even willing to look into our faces unless you have a fatter piece of land with a land title ... Insurance companies also don’t want to do health insurance for older persons above 60 years.”

*They spoke about their invisibility and their commitment to participate in the decisions that affect them.*

A 75 year-old man in Belize said, “We have been taken for granted much too long by all governments,



The ADA campaign in the Philippines.



The ADA campaign in Pakistan.

and it is about time that they understand that we are the ones who put them in power”.

Etta Oking Rickary, a 55-year-old retired civil servant, from Cameroon recognized, “We understand that the Government needs our push for things to be done for us, and so we are committed to continue advocating for our rights.”

*They called for their right to equitable access to health services.*

In Ghana, Cecilia Osei, a leader from the Ashanti Region, spoke about access to affordable and good quality medicines, key elements of the right to health: “The NHIS exemption age should be reduced to 60 years so older people can enjoy good health, and drugs administered to older people should be good drugs and not any drugs.”

*They drew attention to their right to social care.*

In the Philippines, Crispulo Migriño spoke about how their campaign had

“...raised awareness to the general public of the looming crises of social services for older persons.”

The government’s responsibility to ensure long-term care at home was also raised in Tajikistan. 74-year-old Zavziya Masalimova said, “Older people living at home should be under constant care by the ministerial officials, especially during the winter time when we have regular electricity cuts.”

*They called for their right to social security.*

One older person in Tanzania questioned universal access to pensions when he asked: “What is the logic in paying a pension to the clerk who was weighing and entering the data of the cotton produced by farmers, and completely forgetting to give a pension to the older people who were toiling in cultivating that cotton?”

In Tajikistan, two more key components of the right to social security were raised: adequacy and availability. “Our pension should be increased and more importantly, it should be paid on time and regularly”, said Zamira Zokirova, 77.

*They spoke about their invisibility and their commitment to participate in the decisions that affect them.*

And whilst the ADA campaign has achieved some change in a number of countries, some expressed their frustration at the inaction of some of those with the responsibility to protect their rights.

Ofelia Hispano, 59, from the Philippines explained, “Some politicians support and listen to the shout and campaign of older people. They even propose bills for the welfare of older people, but still others are more than deaf and blind to our issues and concerns.”

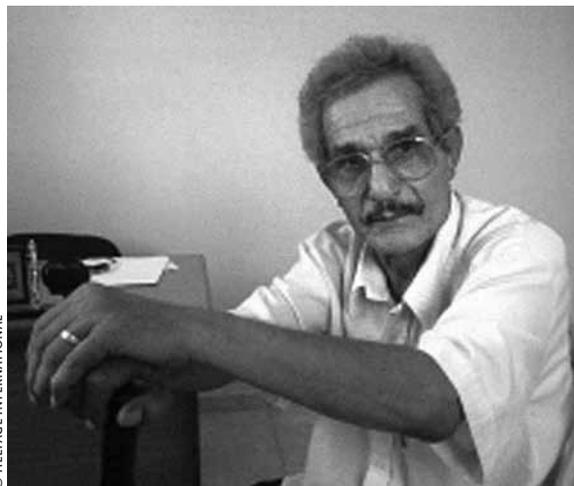
In Moldova, Galina Cecalev, the leader of Women’s Club “Speranta” told us, “This year I noticed that older people who participated in ADA for several years were very disappointed that after many meetings and demands, nothing has been done so far.”

As governments in Latin America and Africa discuss regional protection of older people’s rights and UN Member States debate whether an international convention and special rapporteur are necessary, these older people’s voices should be ringing in their ears.

As Abed Err HmanShehada, 74, from Gaza says: “I am an advocate for equality in society. Everybody in the world has the right to live in peace, with safety and dignity. No one, young or old, should be discriminated against.”

**Bridget Sleap**

Senior Rights Policy Adviser  
HelpAge International  
[www.helpage.org](http://www.helpage.org)



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Mr Abed Err Hman Shehada who gave the final quote.

## Voices from the front: *health care in Wales*

In her role as Older People's Commissioner for Wales *Ruth Marks* seeks dignity and respect on behalf of vulnerable hospital patients.



Over recent years, and with an increasing sense of dismay and frustration, I have read reports of older people enduring inappropriate and sometimes inhumane treatment in hospitals across the United Kingdom. As an independent statutory advocate for people aged sixty or over in Wales, accounts of inconsistent standards of treatment and difficult hospital stays have been regularly relayed to me since I took up post in 2008. So powerful were these accounts, and so long lasting the impact on the lives of those affected, that in March 2010 I announced I would undertake a Review of the experiences of older people in hospital in Wales, particularly focusing on dignity and respect.

My report, *Dignified Care?*, was published in March 2011. Its findings are given their strength by the focus on older people's voices and their powerful accounts of the reality of a hospital experience. I found that many older people, their relatives and carers did not show a high level of understanding of their rights, nor did they have high expectations of how they should be treated.

*Dignified Care?* makes twelve recommendations to the medical profession in Wales. One of these recommendations is that older people, their families and carers should be given a clear explanation of their right to receive dignified care.

Perhaps one of my most challenging recommendations for medical staff is that the sharing of a patient's personal information in the hearing of others should stop wherever possible. During my Review, many older people spoke of the loss of dignity when fellow patients or their visitors overhear intimate personal details of their condition or treatment plans. While the low expectations of many older people meant they viewed this as an inevitable part of a hospital stay, it should be seen as a breach of their confidentiality and right to privacy, and should not be accepted as a matter of routine.

I am calling for a focus on the rights of the patient, and for clinical staff to consider their routine review of patients as a series of individual consultations which, whenever possible, should take place in a ward facility which is accessible, appropriate and offers privacy. For the Health Bodies responding to this recommendation, it has challenged their ability to think creatively about how to manage daily ward situations in a way which would put the older person's rights first. For instance, if a patient in a shared

bay cannot be moved to a private space because of their condition, could more mobile patients be moved? Could mobile sound proof screens be deployed as a matter of routine?

The Human Rights Act, and the UN Principles for Older Persons, which underpins my role as Commissioner, focuses the mind on dignity in care as an essential expectation and requirement. This really important understanding should centrally influence the behaviour of all those involved in health and social care.

**Ruth Marks**

Older People's Commissioner for Wales  
*[www.olderpeoplewales.com](http://www.olderpeoplewales.com)*

*... many older people spoke of the loss of dignity when fellow patients or their visitors overhear intimate personal details of their condition or treatment plans*

## **MORE**

Established in 2008, the Commissioner is tasked with promoting awareness of the interests of older people, challenging age discrimination, reviewing the law and promoting good practice. The Commissioner has legal powers to review the impact on older people of how public bodies in Wales are delivering their functions and services.

*'Dignified care? The experiences of older people in hospital in Wales* published in March 2011 by the Older People's Commissioner for Wales.

## Between the reality and the rhetoric: *The rights and expectations of older Australians*

Legislation is fundamental to our society. But, according to *Sue Field*, legislation alone will not overcome the issues associated with the rights of older Australians.



As with most Western Countries, Australia has an ageing population. At present, approximately 13% of the population is aged 65 years or older, and based on current projections it is estimated that this figure will rise to 18% by about 2021, and by 2050 approximately 26% of the population will be over the age of 65 years.

This paper examines some of the issues facing older Australians and demonstrates that there is a discrepancy between what older people expect and what they actually receive.

In Australia, there is no specific legislation that attempts to deal with the legal issues affecting older people. Whether or not there should be, is somewhat of a moot

point. Those in favour of such legislation believe that there should be legislative protection for older people, akin to the legislation that protects minors. Those against the introduction of such legislation believe that older people of sound mind have the same rights as younger people to make decisions that some may argue are foolhardy and detrimental to the well being of the older person.

But whatever legislation is or is not enacted, the expectations of older people revolve around the following issues - somewhere safe and affordable to live; the right to long-term healthcare; the right to gainful employment and financial security; and the right to make decisions for themselves, or else appoint someone they know and trust to make decisions for them.

Unfortunately, as basic as these expectations may appear, the reality is somewhat different.

While owning one's own home has been a legitimate expectation for most Australians, and is in fact an integral part of Australian culture, this expectation is rapidly turning into an unfulfilled dream. Increased house prices have put home ownership out of the reach of many people and the Global Financial Crisis has impacted on the savings/retirement

plans of many older people. For those people who do own their own home, the cost of repairs and maintenance may exceed the income of the homeowner, necessitating cut backs in their daily living expenses and a subsequent diminished quality of living. For those persons who have lived in rental accommodation during their working lives, the picture is even bleaker. Existing on the age pension means, in effect, that those persons whose income is reliant on the pension and/or limited savings, often have no option but to seek accommodation in boarding houses or rental retirement villages. Security of tenure in such accommodation is tenuous and more often than not creates social isolation as the older person moves out of an area, where perhaps over many years they have built up a social support system, and into an unknown environment.

*The right to make our own decisions is fundamental to a democratic society, however, if it is determined that we lack mental capacity, that right is often taken away.*

However, some people do require long-term care and the services provided by residential care facilities. Residential aged care is governed by the *Aged Care Act 1997*, Commonwealth legislation which addresses residential (and community care) throughout Australia. Incoming residents are assessed by an Aged Care Assessment Team (ACAT) and based upon the assessment are then eligible for assistance while still living at home in the community, or low care or high care within a residential aged care facility. Since the introduction of the legislation, those “care recipients” entering into low care pay an accommodation bond on entering the facility (and other ongoing charges during their tenure). The amount of the bond is set by the facility itself and may or may not be negotiated with the incoming resident. The only restriction is that the incoming resident must not be left with less than 2.25 times the basic aged pension amount. Bonds therefore can be as little as fifty

thousand dollars or in excess of one million dollars. Obviously the more money the older person has, the greater their choice of facilities.

High care has not attracted an accommodation bond; however, in the recently released Productivity Commission Report “Caring for Older Australians”, the Commission supported the introduction of a government backed equity release scheme whereby homeowners could draw down on the equity of their own home to help fund their long-term care. The implications of such a move would have ramifications not only in the short-term for the older person/s but raise the contentious issue of inheritance i.e. “what, if anything, will the children inherit, if not the family home?”

Providing sufficient funds to live on is more often than not dependant on a long working life. However, older persons wanting, or needing, to remain in the work force, are confronted with the ever-present view that older workers are past their “use-by date”. Notwithstanding both State and Commonwealth age discrimination legislation and the appointment of a Federal Age Discrimination Commissioner, older workers (or would-be workers) remain unemployed, disillusioned and dependent on meagre social security payments. In many situations, the long-term unemployed risk losing their homes and are forced into the rental market and the tenuous security of tenure associated with much of the accommodation available to those persons who find themselves in the lower socio-economic demographic.

The right to make our own decisions is fundamental to a democratic society; however, if it is determined that we lack mental capacity, that right is often taken away from the individual and a substitute decision maker may be appointed. Most states and territories have legislation that permit the individual (while still possessing the requisite mental capacity) to appoint a substitute decision maker for financial, personal and health decisions, should the donor of the power lack the requisite mental capacity, at a time in the future, to make their own decisions. Because Australia has a federal system of government, as to be expected, there are minor variations in the legislation. Attorneys acting pursuant to an enduring instrument may be confronted with difficulties at a time when it is imperative that they act upon the powers conferred upon them by the donor. Such problems are not necessarily caused by the legislation and an unsuspecting attorney may well

find that the financial institution will not recognize the instrument itself and prefer to rely upon their own third party signatory documentation.

Older people will not simply go away; they will continue to grow in numbers and the above issues will also continue to grow in magnitude. Legislation is fundamental to our society, but legislation alone will not overcome these issues. Until the governments, both state and federal, are educated and informed, and prepared to act to improve the current situation, any “reforms” aimed at enhancing the lives of older people will unfortunately remain in the realm of rhetoric.

**Sue Field**

NSW Trustee and Guardian Fellow in Elder Law  
School of Law  
University of Western Sydney  
*s.field@uws.edu.au*

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