

THE NEED FOR A CONVENTION ON THE RIGHTS OF OLDER PEOPLE

Introduction

In Ireland today, in Europe and globally the rights of older persons are not effectively protected. International human rights law has little to say on issues particular to older people such as elder abuse or support in long-term care. Age Action is part of growing international support for a new international convention on the rights of older people that would address this.

A new convention would articulate what human rights law has to say about the issues that are specific to older people and create a legal obligation on States to protect the rights of older persons. If ratified by Ireland, it would be directly applicable here.

No human rights standards for older people

While human rights apply to everyone without age limits, the realisation of human rights for older people is, in practice, impeded by negative attitudes and extensive discrimination.

Many international human rights instruments are universal by nature, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

“ *However, older people are rarely specifically mentioned in the covenants themselves or in the commentary or recommendations made by the committees established to monitor compliance with the covenants.* ”

There have only been 115 specific recommendations on the rights of older people across all the Special Procedures and Treaty Bodies since 1999 and there is no sign of any increase in attention.¹

This neglect is also true of the Universal Periodic Review (UPR), a human rights peer review process carried out by Member States through the UN Human Rights Council.

¹ Universal Human Rights Index search for older persons (a listed affected group). <http://uhri.ohchr.org/search/annotations> Visited 1st July 2015, conducted by HelpAge International

A review HelpAge International conducted of the two UPR cycles to date showed that only 113 out of 38,298 recommendations, that is 0.3 per cent, have referred to older people. And only four of those recommendations were specifically on the elimination of discrimination in older age.²

Even the adoption of the Convention on the Elimination of Discrimination Against Women general recommendation on the rights of older women in 2010 has not resulted in an increase in recommendations on older women's rights.³

International human rights law does not articulate or explain issues that are particular to older people such as elder abuse or support in long-term care settings. Similar gaps in how human rights law applied to child protection and adoption, for example, highlighted the need for the Convention on the Rights of the Child.

United Nations and Older People's Rights

In 2010 the UN General Assembly set up the UN Open-ended Working Group on Ageing (OEWG)⁴ to examine how the human rights of older people could be better protected.

The group was also tasked with suggesting how these gaps might be addressed, including through new legal instruments or a new international convention on the rights of older people.

It is mandated by the UN General Assembly and meets once a year. It has met six times, most recently in July 2015, and has discussed many different issues relevant to the rights of older people. The most recent meeting focused on older women, age and gender discrimination and on new regional legal instruments on the rights of older people in the Americas and Africa.⁵

Many states who are not supportive of drafting a new convention contend that the implementation of the Madrid Action Plan on Ageing (MIPAA)⁶ is enough to protect the rights of older persons, even though the MIPAA is simply a policy statement and is not legally binding. It is far weaker than a robust, legally binding, human rights based treaty.

There is currently no consensus on whether a new convention should be drafted. This is despite a UN General Assembly resolution in December 2012 which tasked the OEWG to consider and report on what should go into a new international legal instrument on older people's rights.⁷

- 2 UPR Database, Search under key words: older persons, elderly, old age, older people, <http://www.upr-info.org/database/> Visited 30th June 2015, conducted by HelpAge International
- 3 UPR Database, Search under key words: older persons, elderly, old age, older people, <http://www.upr-info.org/database/> Visited 30th June 2015 and Universal Human Rights Index search for older persons (a listed affected group). <http://uhri.ohchr.org/search/annotations> Visited 1st July 2015, both conducted by HelpAge International
- 4 UN General Assembly resolution A/RES/65/182
- 5 See <http://social.un.org/ageing-working-group/documents/sixth/ProposedOrganizationofWork.pdf>
- 6 See http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf
- 7 UN General Assembly resolution A/RES/67/139

In November 2015, another UN resolution highlighted that the wide range of different international policies and standards related to older people's rights may lead to older people being ignored in much of the monitoring of human rights treaties that relate to them.

The resolution, which was adopted by consensus, reaffirmed the mandate of the OEWG to present proposals for a new convention.⁸ The next OEWG meeting is due to take place on 12-15 December 2016.

What would a new convention do?

A new convention would provide Governments with a set of standards on human rights in older age that is currently missing from the international human rights system and against which their policies and actions could be measured. It would articulate how human rights apply to, among other issues:

- Access to pensions and the right to an adequate standard of living;
- Access to appropriate and timely healthcare for older people;
- Protection from age discrimination in employment;
- Support in nursing home and community care settings; and
- Palliative care and dignified dying.

A new convention would also bring clarity to both the nature of older persons' rights and the State's responsibility to protect them. In particular it would:

- Codify the rights of older persons in one single document, taking due account of the specific challenges related with ageing;
- Act as an anti-discriminatory tool to challenge prevailing stereotypes about old age;
- Require governments to collect data, create indicators and develop other supporting instruments to underpin the monitoring process;
- Increase the visibility of older persons;
- Encourage structural changes and shifts in the perception of ageing, guide policy change and provide the basis for advocacy;
- Raise public awareness of older persons' rights;
- Set out a roadmap to create societies and environments for all ages, where older persons are able to contribute, prosper and enjoy their rights.⁹

⁸ Reference A/C.3/70/L.50/Rev.1, <http://www.un.org/en/ga/third/70/proposalstatus.shtml> Adopted 24th November 2014 by the Third Committee of the UN General Assembly

⁹ From the Global Alliance for the Rights of Older People, see here <http://www.rightsofolderpeople.org/faq-strengthening-older-persons-rights-worldwide/>

The Independent Expert on the enjoyment of all human rights by older persons

The UN Human Rights Council appointed Rosa Kornfeld-Matte as the new Independent Expert on the enjoyment of all human rights by older persons in September 2013 for a three year term.¹⁰ One of her main responsibilities was to present a comprehensive report to the OEWG at the end of her term.

The report has been published and was presented to the 33rd session of Human Rights Council in September 2016.¹¹ In the report, the Independent Expert finds that older people face a number of particular challenges in the enjoyment of a wide range of their human rights and that the implementation of existing law raises a set of protection concerns.

While acknowledging several good or promising practices, the Independent Expert, based on the information provided to Member States, civil society organisations, national human rights institutions and other stakeholders, concludes that neither the Madrid Plan nor existing national laws are enough to address current gaps in the protection of the rights of older people.

Importantly, the Independent Expert calls on States, including Ireland, to step up their efforts to determine the best way to strengthen the protection of the human rights of older persons and to consider the elaboration of a convention on the rights of older persons.

She also recommends the OEWG fulfil its existing mandate by presenting a proposal on the main elements of an international legal instrument to the UN General Assembly, as it was requested to do by the General Assembly in 2012.

Age Action considers this report crucial to building momentum towards the drafting of a new convention and hopes that Ireland and other EU States will support this at the OEWG meeting in December 2016, and at future OEWG meetings.

Human rights of older people beyond Europe

As demographic ageing is happening in every region of the world and happening fastest in developing countries¹² the onus is also on Ireland and EU Member States to support a convention to ensure the rights of older people are protected in the Global South.

While Europe has a relatively robust human rights framework other regions of the world do not. This places a responsibility on regions like Europe to lead the way in developing strong human rights protection for people in other places.

This is best done through establishing universal human rights standards and adopting international human rights treaties.

Supporting a new convention will also send a strong message to many non-European States that do not

¹⁰ Human Rights Council Resolution A/HRC/24/L.37/Rev.1

¹¹ The report of the Independent Expert (A/HRC/33/44) is available here http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/44

¹² See World Population Ageing 2015 http://www.un.org/en/development/desa/population/publications/pdf/ageing/WPA2015_Report.pdf

have yet the necessary protections for older people in place to adopt appropriate measures, thus bringing all countries up to a similar level of protection.

A new convention would provide these governments with a legal framework, as well as guidance and support, to help them protect and promote older people's rights in their ageing societies.

Ireland also has a proud history in development aid and the promotion of human rights. By actively supporting a new convention at the OEWG Ireland can further demonstrate its commitment to human rights, and to older women and men, internationally.

The Irish Government and the EU position

The Irish Government, through our Permanent Mission to the UN, has attended most of the OEWG meetings and has taken its line from the common EU position.

The EU position on a new convention has evolved over time. Currently the EU is not opposed to drafting a new convention. Neither, however, is it a vocal supporter. Individual Member States also have their own positions and Slovenia has been actively supporting a new convention since 2014.

Age Action recognises and supports the active engagement of the Irish Government and the EU in the OEWG process.

Ireland, along with the EU and its Member States more generally, traditionally takes a positive approach to human rights within the UN system.

In the Human Rights Council meeting on 29 September Ireland co-sponsored a resolution on the rights of older people. The resolution aims to contribute to the substantive understanding of how human rights standards apply to older persons, renews the mandate of the Independent Expert and provides for consideration of the possible elaboration of a multilateral instrument on the rights of older persons (a convention).

The recently adopted EU Action Plan on Human Rights and Democracy 2015-2019¹³ includes a dedicated action on older people's rights that the European Commission, EU Member States and the European External Action Service are responsible for delivering.

The action commits the EU to 'increase awareness of the human rights and specific needs of older persons paying particular attention to age based discrimination.

A motion by the European Parliament Committee on Employment and Social Affairs in July 2015 also called on the European Commission, the European Council and Member States to adopt a positive position within the OEWG to ensure that older citizens can fully enjoy their human rights.¹⁴

¹³ Reference A/C.3/70/L.50/Rev.1, <http://www.un.org/en/ga/third/70/proposalstatus.shtml> Adopted 24th November 2014 by the Third Committee of the UN General Assembly

¹⁴ Available here <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0241+0+DOC+XML+V0//EN>

Call for action



It is clear there has been debate over the past number of years on the rights of older people. With the recent report by the Independent Expert and developments at the Human Rights Council we are calling on the Irish Government to take a number of important actions.



We call on the Government to:

- Instruct the Irish Permanent Mission to the UN in New York to become a member of the New York Group of Friends, a group of like-minded Member States working to promote the rights of older persons in the work of the UN in New York;
- Continue to attend the OEWG sessions at the UN and make constructive comments about what should be in a new convention;
- Include an older person and civil society organisations in the Government's delegation at OEWG sessions to ensure that older people's views are represented;
- Consult older people in Ireland to inform the Government's positions at the OEWG;
- Continue to support the Independent Expert on the enjoyment of all human rights by older persons in the fulfilment of her mandate;
- Actively support efforts to draft a new international convention on the rights of older people.

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