

situation reflects the general lack of instruments and international consensus over combating age discrimination and the social exclusion of older people. This is perhaps surprising, given that the potential exists to locate older people's rights within a broader framework of international human rights. The human rights approach to employment is holistic and extends beyond the parameters of the International Labour Organization's (ILO's) social justice approach (MacNaughton and Frey, 2010). It was reaffirmed in the 1993 UN Vienna Declaration and Programme of Action, which states: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.' Given that human rights are by definition universal, at least in theory, a whole array of internationally recognised human rights standards and principles also covers and protects older persons. However, potentially reflecting the limited focus on population ageing at the time of its ratification in 1948, the UN's Universal Declaration of Human Rights fails to accord sufficient attention to old age. Indeed, older persons are not only excluded from the UN's binding human rights instruments, but also from its mainstream agenda, as reflected, for example, in the Millennium Development Goals.

While age at work has been regulated in terms of the minimum age at which one is permitted to work by the Convention on the Child (ILO Convention No 138), no equivalent regulation relates to age discrimination. Consequently, in many nations, older persons continue to experience discrimination on the basis of their age and inadequate recognition of their human rights. Further, older people's specific needs are too often underestimated, thus providing a context for the risk of abuse, neglect and violence. This not only affects the older person, but also their families and society as a whole (WHO, 2002). Although some countries have enacted partial legislation, to date, the human rights and ethical framework to eliminate discrimination, exclusion, abuse or unequal treatment due to age has barely been addressed at the UN or at the European level (Stuckelberger, 2006, 2008).

Numerous international instruments – including, for example, the Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, as well as the Convention on All Forms of Discrimination against Women (CEDAW/General Assembly resolution 34/180, 18 December 1979) – refer to the rights of all without specifically mentioning older persons or age. The Universal Declaration of Human Rights makes passing reference to the particular vulnerability of older persons in Article 25, stipulating that:

everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... medical care and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

It was not until the UN's Declaration on Social Progress and Development in 1969 that there was more than a passing mention of old age (Article 11). It then took until 1982 for the UN to adopt a First International Plan of Action on Ageing at a meeting in Vienna. In 1991, the General Assembly produced the UN Principles for Older Persons (Resolution 46/91), which reaffirm fundamental human rights, the dignity and worth of the human being, and the need for equality in five areas: independence, participation, care, self-fulfilment and dignity.

To date, the most important elements of the international legal standards emerged in 1995 with the adoption of General Comment No 6 on the Economic, Social and Cultural Rights of Older Persons (Doc E/1996/22, Annex IV). General Comments are important in the sense that they reflect the interpretation of the provisions of Covenants adopted by the UN General Assembly by internationally recognised independent experts. Comment No 6 stressed that states belonging to the UN needed to adapt their social and economic policies to respond to the needs of ageing populations and that they should give more consideration to older persons in their human rights monitoring and reporting. The General Comment also sheds light on the relationship between the provisions of the International Covenant on Economic, Social and Cultural Rights, the Vienna International Plan of Action on Ageing, and the United Nations Principles for Older Persons, clearly indicating the interrelationship of both binding and non-binding commitments. At present, this remains the only UN document focusing on the rights of older persons that has been adopted by the United Nations Treaty Body. Nevertheless, the General Comment is considered to be a 'soft law' – that is, one that is not as binding for signatory states of the Covenant as the articles of the international treaties. In addition, although the issue of older persons' rights may be related to the mandate of this Treaty Body within the economic, social and cultural areas, the committee monitoring the implementation of the Covenant on Economic, Social and Cultural Rights is not mandated to focus on this issue since there is no particular provision within the Covenant for such a right.

Nevertheless, despite such weaknesses, there are recent signs of progress in relation to older persons' human rights. This draws in particular on the work of non-governmental organisations (NGOs) at the Human Rights Council in Geneva (United Nations, 1999; Stuckelberger, 2011). Strong statements were adopted in 2006 (on the right of older persons, signed by 24 NGOs) and 2009 (on the right of older women, signed by 34 NGOs) (Stuckelberger, 2009). Four key initiatives have since been taken by the UN:

- First, General Recommendation No 27 concerning older women and the protection of their rights was adopted by the Committee responsible for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 2010). The recommendation addresses a range of issues relating, for example, to access to education, social pensions and adequate housing. It also has a particular focus on addressing multiple discrimination against older women.

- Second, the 2010 annual report of the UN's Independent Expert on Human Rights and Extreme Poverty addresses the role that social protection systems play in reducing extreme poverty and contributing to the realisation of human rights of older persons. In particular, the report focuses on the relevance of social pensions (as discussed in Chapter Four in relation to Brazil and South Africa). The Independent Expert calls on states to recognise that social pensions are critical elements for the progressive realisation of the right to social security for older persons.
- Third, in 2010, the fourth session of the Human Rights Council Advisory Committee received a working paper on the necessity of a human rights approach and effective UN mechanism for the human rights of older persons (Chung, 2010). The paper, which has yet to be adopted by the Human Rights Council, makes a strong case for implementation of an international human rights framework for older people, arguing that a 'systematic and comprehensive mechanism' is needed to protect older persons' rights.
- Fourth, also in 2010, the UN established an Open-ended Working Group on the Rights of Older Persons with the purpose of 'strengthening the protection of the human rights of older persons by considering the existing international framework of the human rights of older persons and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures'.

Notwithstanding such developments, the absence of a specific framework for older persons' human rights at the EU and UN raises several challenging questions. For example, there is the practical question of whether an international human rights framework for older people is even possible. Then there is the issue of whether such a framework should be mainstreamed or adopted as a stand-alone measure, or even a combination of both. In responding to questions concerning characteristics that are specific to old age, the broader issue is raised about the extent to which older persons require particular forms of protection. While some would argue that older people are already sufficiently protected by existing human rights standards and treaty bodies, others hold the view that it is impossible to respond sufficiently to any global agenda – such as the Millennium Development Goals – by systematically excluding or neglecting old age (see, eg, Doron and Apter, 2010; see also Tang and Lee, 2006; Aboderin, 2010; McDonald, 2010).

Conclusion

In this chapter, we have argued that the promotion of social inclusion through the allocation of equal rights to people of all ages represents an important element of a 'society for all ages' (Stuckelberger and Vikat, 2008; UNECE, 2008). In addressing the theme of social exclusion based on age discrimination in Europe, and drawing on relevant survey data, we reviewed core processes of discrimination and exclusion based on old age, such as ageism, stigmatisation and stereotyping.

We then examined existing policy responses to age discrimination and exclusion in the form of legislative instruments available in European nations, and more broadly through UN mechanisms.

In this context, we have suggested that age discrimination and age stereotyping is emerging in different fields as a key area of social exclusion, whether in relation to employment, health care or the fair distribution of assets and resources, especially for women. As a result, there is a strong case to be made for more concerted action at the policy level to address exclusion on the basis of age. Despite some achievements in terms of developing protection and rights for older persons, much remains to be done. And, without additional interventions, legislating for older persons' rights is insufficient. Appropriately robust mechanisms to monitor and protect those rights are just as important and should be incorporated systematically and comprehensively into future international and national legislation and policies. Exercising rights against discrimination requires a thorough analysis of age-specific situations and factors that accentuate discrimination in contexts beyond the workplace. For example, there is further conceptual work to be done in relation to connecting key dimensions of the exclusion discourse to relevant legal frameworks. This applies to such issues as loneliness, isolation and the sufficiency of material resources in old age. In sum, there is still a lot to do if we are to implement 'evidence-based policies', give access to equal rights for people of all ages, prevent the discrimination and exclusion of older men and older women, and to truly achieve the UN's goal of a 'society for all ages'.

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