

GAROP Briefing

The Imperative of Including a Comprehensive International Legally Binding Instrument in United Nations Open-ended Working Group on Ageing Intergovernmentally Negotiated Recommendations

States should include a comprehensive international legally binding instrument on the rights of older persons as a crucial option in any inter-governmentally negotiated recommendations on how to best address identified gaps in protection of older persons' rights.

Suggested language for recommendation:

Establish a Working Group that will elaborate¹ a comprehensive international legally binding instrument on the human rights of older persons

I. A comprehensive international legally binding instrument

A comprehensive international legally binding instrument, namely a United Nations (UN) human rights treaty often referred to as a UN convention, is the only mechanism that would fulfil the following requirements necessary to address identified gaps. It would:

- Provide a comprehensive and coherent normative framework, substantively and symbolically, for a world free from ageism and age discrimination, where older persons are treated with dignity, entitled to live free from violence, and empowered to participate on an equal basis with others in society
- Provide States with a legal framework, recommendations, guidance, and support to better promote and protect older persons' rights
- Address a systematic, comprehensive, interdependent range of rights in older age – civil, political, economic, social and cultural
- Articulate with specificity lacking in the current human rights framework how human rights apply in the context of older age, including how they apply to older persons in all their diversity
- Be legally binding at the international level on States following ratification or accession, so that ratifying states have a legal obligation to ensure older persons enjoy at minimum a set of internationally agreed upon standards.
- Require states to adopt and/or revise national legislation to comply with its standards, including non-discriminatory laws to protect against age discrimination

¹ "Elaborate" includes drafting and negotiating a text for UN Member States to adopt.

- Require States to disaggregate data and collect data on age-specific indicators for evidenced-based policy making
- Provide for domestic mechanisms to implement and monitor implementation
- Provide for the active and meaningful participation and engagement of older persons and their organisations in policymaking generally, and in the implementation and monitoring of the treaty
- Maintain a focus on older persons through periodic reports on the human rights of older persons
- Establish a framework to develop and adopt general comments and other outputs to address emerging concerns around older persons' human rights
- Guide policy and program development and delivery based on human rights standards.

The failure by States to include a comprehensive international legally binding instrument as an option would:

- Set back by many years, if not decades, the possibility of drafting and negotiating a comprehensive international legally binding instrument
- Send a message that older persons are invisible, that their voices are not heard, and that abuses of their human rights will continue to be tolerated despite the serious violations against older persons during the COVID pandemic and its socio-economic aftermath
- Deny all generations, current and future, an instrument that codifies rights in older age
- Disregard the increasing support for such an instrument among Member States at both the UN Open-ended Working Group on Ageing since its establishment in 2010, and the Human Rights Council
- Ignore the conclusions of the [UN Secretary General](#), the [UN High Commissioner for Human Rights](#), the [Independent Expert](#) on the enjoyment of all human rights by older persons, treaty body members and UN bodies who briefed States as part of this intersessional process, and 13 years of [evidence](#) submitted to the UN Open-ended Working Group on Ageing by older persons, civil society organizations, national human rights institutions, experts and Member States.

2. Limitations of Other UN Mechanisms

States have suggested more extensive use of existing UN mechanisms as a way forward in their responses to the co-facilitators' questionnaire. While such actions, individually or in combination, might bring about marginal improvements,

- Individually, none of these would provide the systematic and comprehensive approach of an international legally binding instrument
- Collectively, relying only on such a piecemeal approach would perpetuate the current dispersal and fragmentation of rights, and the many gaps this has given rise to.

2.1 A UN declaration on the rights of older persons would:

- Not be legally binding on States
- Not have a reporting and monitoring system, and therefore provide no accountability or additional obligation and incentive for implementation beyond the current “soft law” documents devoted to ageing and older persons, such as the UN Principles for Older Persons and the Madrid International Plan of Action on Ageing
- Not provide States with specific guidance or outline obligations in detail.

2.2 An optional protocol to an existing human rights treaty would:

- Not address a comprehensive range of rights since those relevant in older age are dispersed across the full range of international human rights treaties
- Not reduce the current fragmentation of rights since optional protocols could be attached to a number of treaties. Development of a number of optional protocols would take place at a varying pace, be drafted by different bodies, be open for ratification only by States parties to the relevant treaty, and may be ratified by different combinations of States, which would further entrench fragmentation.
- Not give the same weight to older persons as to others, such as women, children and persons with disabilities, whose rights are enshrined in dedicated international human rights treaties, not optional protocols to existing ones.

2.3 Use of UN Special Procedures would:

- Not systematically address a comprehensive range of rights in older age. Contributions by individual special procedures under their respective mandates would only provide piecemeal coverage of rights.
- Not generate legally binding recommendations, as Special Procedure recommendations are not legally binding and there is no enforcement or reporting mechanism to monitor their implementation.

2.4 Use of existing treaty bodies would:

- Not ensure a systematic or comprehensive review of States’ obligations towards older persons. Attempts to articulate how rights apply to older persons and in older age to date in general comments and recommendations by UN treaty bodies have been few in number, limited in scope and dispersed across different mechanisms.
- Not provide an accessible, comprehensive and systematic framework, since general comments inherently develop interpretations of international norms in a piecemeal fashion with respect to different treaties at different times
- Not guarantee systematic attention to the rights of older persons since these may not be a priority for any given treaty body or treaty bodies as a whole
- Not guarantee that monitoring and reviews are carried out by experts on the rights of older persons since committee members in existing treaty bodies will have been chosen

for their expertise on other human rights issues and may lack relevant expertise on older persons.

2.5 Use of the Universal Periodic Review would:

- Not ensure the systematic and comprehensive review of all rights relevant to older persons
- Not generate legally binding recommendations
- Not give significant visibility to the human rights of older persons because of the hundreds of comments and recommendations made to States under review across the full range of human rights.

2.6 Updated ILO conventions would:

- Not address a comprehensive range of human rights.

2.7 An updated international plan of action on ageing would:

- Not be legally binding on States
- Not provide any additional obligation or significant incentive for implementation beyond the current “soft law” documents devoted to ageing and older persons, such as the UN Principles for Older Persons and the Madrid International Plan of Action on Ageing
- Not be sufficient to promote and protect the rights and dignity of older persons without an international legally binding instrument to complement and reinforce it.²

2.8 Action under the UN Decade of Healthy Ageing would:

- Not address a comprehensive range of human rights
- Not be subject to monitoring or reporting obligations on States
- Not be sufficient to promote and protect the rights and dignity of older persons without an international legally binding instrument to complement and reinforce it
- Not necessarily continue beyond the period of the Decade.

12 January 2024

² See E/CN.5/2023/6, para. 74.