

**Open-ended Working Group on  
Ageing  
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**Panel 1  
Age Discrimination**

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# Non-discrimination clauses in H.R treaties

- The prohibition of discrimination is one of the pillars of international human rights law and applies to all individuals
- Prohibited grounds of discrimination include the open ended category of “other status”
  - UDHR -Articles 1, 2 and 7, ICCPR - Articles 2, 26, ICESCR- Articles 2(2)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families explicitly prohibits discrimination on the basis of age (Art. 7)

# References to age/older persons in H.R treaties

- CEDAW art 11.1 refers to the equal right of women to social security including in old age.
- CRPD refers to age as a potential source of multiple discrimination combined with disability:
  - It refers to “age-appropriate” or “age-sensitive” measures and protection for people with disabilities related to access to justice and prevention of abuse & violence. (Art. 13, Art. 16)
  - It recognizes access to social protection and poverty programs for older persons with disabilities (Art. 28. 2 b) and health services (Art. 25 b)
  - It requires to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on age (Art 8)

# Older persons in the Interamerican system

- The American Convention does not list age among the grounds for discrimination in the enjoyment of human rights, but it is implicitly recognized under the phrase “*any other social condition*”
- The Protocol of San Salvador in Art. 17 pledge to gradually supply suitable facilities as well as food and specialized medical care for older persons who lack them; to set up work programs specifically designed to give older persons the opportunity to engage in productive activity; and to establish social organizations

# Age discrimination in general observations

- CESCR, General comment No. 6 The economic, social and cultural rights of older persons
- CEDAW, General Recommendation No. 27, Older women and protection of their human rights

Also there are references to older people:

- CESCR General Comment 14 Right to Health (2000); General Comment No. 18, “The right to work”(2006); General comment No. 19, on the right to social security (2008); General comment No. 20, on non-discrimination in economic, social and cultural rights (2009)., etc.

# Older people in Special Procedures

There are some thematic mandates that have identified older persons as a group requiring special protection in relation to the enjoyment of their rights, including the right to adequate housing, health, and their rights in detention facilities, as well as the report of the Independent Expert on human rights and extreme poverty (Kothari, 2007; Hunt, 2005, 2006, 2008; Nowak, 2010; Sepulveda 2010).

Existing international human rights treaties apply to older persons in the same way as to other persons, **BUT** the question is whether age is adequately protected as a forbidden ground of discrimination in existing international human rights law

# Other Status

**Does the term “other status” provide adequate protection to older persons’ rights?**

- To consider age under “other status” allows for a significantly broad margin of discretion
- The consideration of age as “other status” for the purpose of anti-discrimination protection is a flexible standard of scrutiny and distinctions on the basis of age might be easily justified
  - A distinction related to age which is not based **on reasonable** and objective criteria may amount to discrimination on the ground of "other status" under the clause in question (Human Rights Committee, *Love v. Australia*)
- What is the criteria to define what is reasonable?
- In which cases the impositions of age limits may remained within the margin of appreciation of states?



# Treaty Bodies

- The work of the treaty bodies and their general comments has proved to be very important in providing standards and clarify the content of human rights treaties, including their efforts to establish the scope and content of existing human rights norms regarding older persons
- **But** general comments have been considered by most States as non-binding instruments and they may not feel compelled to adopt measures to protect, respect and fulfill the rights of older persons
- States rarely include references to older persons in their reports to the treaty bodies, and there are very few occasions of presentations of alternative reports by civil society regarding older persons

# Conclusions

## **A Convention would:**

- Reaffirm the basic principle of equality and non-discrimination on the basis of age
- Establish age as a suspect class which deserves higher scrutiny to protect older persons from discrimination
- Clarify state's responsibilities towards older women and men and provide a framework for policy and decision making

# Conclusions

## **A Convention would:**

- Recognize and protect older persons from multiple discrimination (older people are not a homogenous group) based on gender, marital status, ethnic origin, minority status, health status, migrant status, etc
- Mandate the adoption of special measures to achieve the objectives of equality of opportunity and treatment
- Provide a reporting and accountability mechanism for States' actions towards older people