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**Human rights of older persons:  
International human rights principles and standards**

**BACKGROUND PAPER – revised and updated  
Open-ended Working Group, GA resolution 65/182<sup>1</sup>**

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# **Human rights of older persons: International human rights principles and standards**

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Across the globe, older persons face particular human rights challenges. Older persons often lack access to decision-making, essential information and opportunities for active participation. Many face income security and are abandoned by the State, by families or by their communities. Discrimination and abuse by relatives or caregivers remains under-reported and undocumented. Data and statistical information after the age of 60 is rare and constitutes a major limitation to improvements in design and implementation of programmes in areas as varied as justice, public transportation, housing and access to information.

Some older persons, particularly older women and members of minority groups, have experienced different forms of violence during their lives; hence their capacity to react is severely undermined. Some others find little opportunities to take part in cultural and community life. Many claim they are seldom allowed to provide their informed consent, including in decisions that will affect their health, property, legal capacity or daily care. Many older men and women argue that their contribution to society is rarely recognized and promoted. Current trends indicate the situation is set to worsen.

These situations point to a broad range of civil, political, economic, social and cultural rights. Despite existing human rights provisions already applicable to older persons in various international human rights treaties, these instruments appear to have been insufficiently applied to the challenges older persons face. While some Committees, especially the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW) have developed specific general comments and recommendations, and devoted attention to this community, some others have seldom addressed older persons in their concluding observations. Similarly, only a few special procedure mandate holders have brought attention and visibility to the elderly.

This paper reviews existing international human rights norms as they apply to older persons. It summarizes relevant work of some international human rights mechanisms (treaty bodies and special procedures) in addressing substantive human rights issues in all regions of the world.

## 1. Introduction

Human rights are by definition universal. By virtue of the universal scope of all rights, the whole range of internationally recognized human rights standards and principles, as contained in core international human rights treaties, also covers and protects older persons.

International bodies have made use of varied and evolving terminology when addressing older persons. In 1995 the Committee on Economic, Social and Cultural Rights (CESCR), already noted the array of expressions: "older persons", "the aged", "the elderly", "the third age", "the ageing", and, to denote persons more than 80 years of age, "the fourth age".<sup>2</sup> The Committee opted for "older persons" (*in French, personnes âgées; in Spanish, personas mayores*), the term employed in many General Assembly resolutions since 47/5 to the present 65/182. According to the practice in the United Nations statistical services, these terms cover persons aged 60 and above.

Nonetheless, there remains different uses across States and, as such, a lack of comparability and precision as to whom specific laws, policies and standards apply and should apply.

Treaty body mechanisms have taken note of these discrepancies and of human rights impacts of ambiguous or conflicting applications of age-specific policies. For example, the CESCR, has expressed concern about the different retirement ages for men (65) and women (60), resulting in lower pensions for women<sup>3</sup> or about the consequences of the changes to the age of eligibility for public pension benefits.<sup>4</sup>

The Covenants, on Economic, Social and Cultural Rights<sup>5</sup> and on Civil and Political Rights<sup>6</sup> include highly relevant provisions for the protection of human rights of older persons. Clearly, some rights like the right to the highest attainable standard of physical and mental health, to an adequate standard of living, to freedom from torture and equality before the law are not age-bound.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD) also contain provisions which are applicable to older persons within their relevant scope.

Despite the fact that the norms in existing international human rights treaties apply to older persons in the same way as to other persons, it has been argued that there is a gap in the international human rights system. Namely, there is no specific provision(s) focusing on

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<sup>2</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 6 on "The economic, social and cultural rights of older persons", E/1996/22, 8 December 1995, para. 9

<sup>3</sup> See for example, Committee on Economic, Social and Cultural Rights, Concluding Observations, Poland, E/C.12/1/Add.82, 19 December 2002.

<sup>4</sup> See for example, Committee on Economic, Social and Cultural Rights, Concluding Observations, Japan, E/C.12/1/Add.67, 24 September 2001.

<sup>5</sup> As of 26 April 2010, the International Covenant on Economic, Social and Cultural Rights has been ratified by 160 States.

<sup>6</sup> As of 26 April 2010, the International Covenant on Civil and Political Rights has been ratified by 165 States.

older persons,<sup>7</sup> nor a universal human rights instrument on the rights of older persons, as is the case for other categories of persons such as women, children, persons with disabilities or migrant workers.

Two human rights instruments contain explicit references to age:

1. The International Convention on the Protection of the Rights of Migrant Workers and the members of their families (ICMW), which includes “age” in the list of prohibited grounds for discrimination.<sup>8</sup>
2. The CRPD includes miscellaneous references to older persons in article 25 (b) on the right to health, and in article 28(2)(b) on the right to an adequate standard of living. Additionally, there are references to age-appropriate access to justice in article 13; and to age-sensitive measures of protection in article 16.

In fact, CRPD merits closer examination. While not all older persons are disabled and ageing should not be equated to a disability in and of itself, many older persons are persons with disabilities. Hence, their human rights are covered by this new instrument. There is no doubt that ageing can often lead to physical, mental, intellectual or sensory impairments and that this Convention offers unexplored potential to respond to various human rights issues affecting them.

Treaty bodies have interpreted and applied existing norms to older persons despite the lack of a specific instrument on the rights of older persons. The Committee on the Elimination of Discrimination against Women has recently adopted General Recommendation No. 27 on older women and the protection of their human rights under the CEDAW. Furthermore, it has addressed specific concerns of older women in most of its concluding observations and recommendations in 2010.

When the Committee on Economic, Social and Cultural Rights adopted General Comment No. 6<sup>9</sup>, it offered the first detailed interpretation of the specific obligations of State parties regarding older persons. General Comment No. 6 clarified the scope of each of the rights contained in the International Covenant on Economic, Social and Cultural Rights, as they apply to older persons.

Human rights treaty bodies have also referred to non-binding United Nations documents and other international documents on ageing and on older persons to clarify existing provisions, and to assist them in the interpretation of the content of a given right in reference to older persons. For example, the Committee on Economic, Social and Cultural Rights has made extensive reference to the 1982 Vienna International Plan of Action on Ageing, the 1991 United Nations Principles for Older Persons, the 1992 Global targets on ageing for the year 2001, and the 1992 Proclamation on Ageing.<sup>10</sup>

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<sup>7</sup> Unlike regional human rights instruments, which specifically mention older persons, such as for example, African Charter of Human and Peoples’ Rights, article 18(4); Protocol of San Salvador, article 17; Revised European Social Charter, article 23.

<sup>8</sup> See Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, article 7.

<sup>9</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 6, “The economic, social and cultural rights of older persons”, E/1996/22, 8 December 1995.

<sup>10</sup> See General Comment No. 6, cit., paras. 4-7, 19, 21, 31-34 and 37-42.

Among these non-binding instruments, the Political Declaration and the Madrid International Plan of Action on Ageing adopted at the Second World Assembly on Ageing in April 2002, and endorsed by the General Assembly in resolution 57/167 of 18 December 2002 constitutes the most recent UN document on ageing.<sup>11</sup> It has guided the development in key areas of legislation and social policies at the national level and has provided a framework for dialogue at international fora. The Political Declaration reaffirms the commitment to promote and protect human rights, to the elimination of age discrimination, neglect, abuse and violence (article 5) and makes references to the right to health (article 14), the opportunity to work and the continuing access to education and training programmes (article 12). Regarding the Madrid Plan of Action, priority directions I, II and III underscore the importance of health, development and well-being.

## **2. Application by international human rights mechanisms of existing norms to older persons**

The following subsections summarize the issues and norms which international human rights mechanisms have applied to the rights of older persons. They also underscore approaches taken by international human rights bodies to address and characterize critical issues and a few specific rights. Overall, international human rights mechanisms have placed more emphasis on State obligations vis-à-vis economic, social and cultural rights, notably the right to social security, to health and to adequate housing, than on issues relating to civil and political rights.

### **a. Non-discrimination**

The prohibition of discrimination is one of the pillars of international human rights law, hence *de jure* and *de facto* discrimination against any individual is at the center of the human rights discourse. The prohibition of discrimination is provided for in [all] international human rights treaties.

Discrimination has been defined as any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>12</sup>

Elements of the definition include:

- a) The principle of non-discrimination applies to all individuals in the consideration of their human rights and fundamental freedoms, including economic, social and cultural rights.
- b) The principle of non-discrimination is linked to and complemented by the principle of equality. In practical terms these two principles must be carefully crafted into legislation, policies, programmes, procedures and practices, each with its own specificities.

<sup>11</sup> General Assembly resolutions in follow up to the Madrid Plan of Action have underlined the importance of implementing the plan: resolutions 60/135 (2005), 61/142 (2006), 62/130 (2007), 63/151 (2008), 64/132 (2009) and 65/182 (2010).

<sup>12</sup> See for example Art. 1 CEDAW and Art. 2 CRPD.

- c) Discrimination means distinctions, as well as exclusions or restrictions made on specific grounds. States are required to ensure that they adequately address human rights issues by abstaining from discrimination (negative obligations) as well as by taking actions (positive obligations) to prevent a violation of the principle of non-discrimination.<sup>13</sup>
- d) Such distinctions, exclusions or restrictions constitute violations, whether they have the effect – the objective outcome – or the intent – the discriminatory intention – of impairing or nullifying the exercise of any right by a particular individual.

Further, international human rights treaties require States to abstain from making *de facto* or *de jure* distinctions that can arbitrarily deny or restrict the full recognition or enjoyment of any human right, on the basis of a number of prohibited grounds.

Two international treaties include an explicit reference to ‘age’ as a prohibited ground of discrimination: article 7 of ICMW, which lists “sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”, and various articles of CPRD which mention age, *inter alia*, as a potential source of multiple or aggravated discrimination, when combined with disability.<sup>14, 15</sup> While “age” is not explicitly listed as a prohibited ground the lists are illustrative and non-exhaustive, and usually include an open-ended category (“other status”), which has provided the opportunity for Committees for the consideration of age-related discrimination.

The CESCR has consistently taken this approach<sup>16</sup>, and held that “(a)ge is a prohibited ground of discrimination in several contexts”.<sup>17</sup> In this regard, it has highlighted “the need to address discrimination against unemployed older persons in finding work, or accessing professional training or retraining, and against older persons living in poverty with unequal access to universal old-age pensions due to their place of residence”.<sup>18</sup> It also held that State

<sup>13</sup> See, generally, Human Rights Committee, General Comment No. 18, “Non-discrimination”, HRI/GEN/1/Rev.6 at 146, 10 November 1989, paras. 7-10; Committee on Economic, Social and Cultural Rights, General Comment No. 20, “Non-discrimination in economic, social and cultural rights”, E/C.12/GC/20, 10 June 2009, paras. 7-9.

<sup>14</sup> See Convention on the Rights of Persons with Disabilities, Preamble, para. (p) and article 8 (1) (b). It also requires “age-appropriate” accommodation regarding access to justice (article 13(1)); “age-sensitive” assistance to prevent exploitation, violence and abuse (article 16(2)); provide “services designed to minimize and prevent further disabilities among... older persons” in the context of the right to health (article 25); and article 28(2)(b) requires States parties to “ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.”

<sup>15</sup> Typically, other international human rights instruments list the following as prohibited grounds of discrimination: race, colour, sex, language, religion or political opinion. See, for example, International Covenant on Civil and Political Rights, article 2(1): “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; International Covenant on Economic, Social and Cultural Rights, article 2(2), “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

<sup>16</sup> See General Comment No. 6, *cit.*, paras. 11-12; General Comment No. 20, *cit.*, para. 29.

<sup>17</sup> See General Comment No. 20, “Non-discrimination in economic, social and cultural rights”, *cit.*, para. 29.

<sup>18</sup> See General Comment No. 20, “Non-discrimination in economic, social and cultural rights”, *cit.*, para. 29. See also General Comment No. 6, *cit.*, para. 22.

parties “need to take measures to prevent discrimination on grounds of age in employment and occupation”.<sup>19</sup>

Significantly, article 26 of ICCPR provides for the protection of equality before the law, including a guarantee for effective protection against discrimination on *any other ground*. The Human Rights Committee has held that “while age as such is not mentioned as one of the enumerated grounds of prohibited discrimination in the second sentence of article 26, the Committee takes the view that 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, or to a denial of the equal protection of the law within the meaning of the first sentence of article 26”<sup>20</sup>, and has confirmed this approach in a number of individual communications.<sup>21</sup>

The Human Rights Committee has further clarified that article 26 encompasses the prohibition of discrimination in law or in practice in *any* field regulated and protected by public authorities, including in relation to the right to social security, such as in the case of a married woman and unemployment benefits. While article 26 did not require the State in that case to enact social security legislation, if the State did adopt legislation, then the law had to comply with article 26 – whether the legislation related to an article in the ICCPR or any other area, including a right under the ICESCR.<sup>22</sup>

Multiple discrimination, or the fact some individuals face discrimination on more than one ground, is a particularly complex issue for consideration and for remedying. In the preamble to its resolution 7/24, the Human Rights Council, has expressed its “deep concern for multiple or aggravated forms of discrimination and disadvantage that [can]lead to the particular targeting or vulnerability to violence of some groups of women, such as elderly women,” (emphasis added).<sup>23</sup>

In a working paper prepared by Ms. Chinsung Chung as member of the Human Rights Council Advisory Committee, “ageism” is defined as “the stereotyping and prejudice against older people that can lead to age discrimination”. In this context, illustrative examples range from neglect and negative stereotyping of the capacities of older people to situations such as those of primary healthcare services, few of which actually “include services specifically

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<sup>19</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 18, “The right to work”, E/C.12/GC/18, 6 February 2006, para. 16.

<sup>20</sup> *Love et al. v. Australia*, Communication No. 983/2001, views of 25 March 2003, para. 8.2

<sup>21</sup> See Human Rights Committee, *Schmitz-de-Jong v. The Netherlands*, Communication No 855/1999, views of 16 July 2001 (minimum age limit for senior citizen’s partner’s pass found objective and reasonable); *Love et al. v. Australia*, cit. (mandatory age of retirement for pilots found objective and reasonable), *Solis v. Peru*, Communication No. 1016/2001, views of 27 March 2006 (age as a criteria for dismissal from public service for reasons relating to the reorganization of public bodies found objective and reasonable); *Althammer et al. v. Austria*, Communication No. 998/2001, views of 8 August 2003 (the abolition of monthly household payments found to be based on objective and reasonable criteria).

<sup>22</sup> Human Rights Committee, communication No. 182/1984, *FH Zwaan-de Vries v. The Netherlands*, views adopted on 9 April 1987, CCPR/C/29/D/182/1984.

<sup>23</sup> Multiple discrimination is also a critical dimension in the consideration of reports by CEDAW and CESCR. See, for instance, Committee on Economic, Social and Cultural Rights, General Comment No. 20, “The economic, social and cultural rights of older persons”, para. 17

designed for the elderly, sometimes health workers may refuse to treat older persons because of their age or because they lack the training on age-related illnesses and palliative care.”<sup>24</sup>

#### **b. Older women**

The most recent development in the international human rights system is the adoption of general recommendation No. 27 by the Committee on the Elimination of Discrimination against Women. Adopted in October 2010, this recommendation addresses older women and the protection of their human rights. The Committee notes that “[although] men and women experience discrimination based on old age, [...] older women experience ageing differently”<sup>25</sup> and sets to underline some of the areas of difference.

The Committee’s recommendation has purposely emphasized multiple discrimination as a prominent feature of the situation of older women. It has noted areas where the situation of women erodes with age, for example in accessing micro credit and finances, or in limitations to health services for certain diseases such as diabetes and geriatric conditions, and has called attention to prohibitions under some statutory and customary laws for women to inherit and administer marital property on the death of their spouse.

In recent years the Committee has also systematically scrutinized State parties about older women in a broad range of human rights issues. Importantly, concluding observations and recommendations address civil and political as well as economic, social and cultural rights, and often devote a specific subsection to older women.

Among such issues, for illustration, the Committee has called for sex-disaggregated data and comprehensive statistical information on older women<sup>26</sup>; has called for appropriate measures to eliminate discrimination with respect to the ownership and inheritance of land<sup>27</sup>; has asked State party to conduct gender assessments of its social sector legislation and policies as well as of its cuts in the health-care budget, paying particular attention to older women<sup>28</sup>; and has urged the State party to pay special attention to the needs of rural women, including older women, ensure their participation in decision-making processes and full access to education, health services and credit facilities<sup>29</sup>.

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<sup>24</sup> See Working Paper prepared by Ms. Chinsung Chung, Human Rights Council Advisory Committee, A/HRC/AC/4/CRP.1, 4 December 2009, para. 8. While not endorsed by the Human Rights Council (see President’s Statement A/HRC/13/PRST/1), the Working Paper provides a useful survey of issues for consideration.

<sup>25</sup> Committee on the Elimination of Discrimination against Women, Forty-seventh session, CEDAW/C/2010/47/GC.1, 19 October 2010, advanced unedited version.

<sup>26</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Albania, CEDAW/C/ALB/CO/3, 16 September 2010, para. 39; Panama, CEDAW/C/PAN/CO/7

<sup>27</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Fiji, CEDAW/C/FJI/CO/4, 16 September 2010, para 35.

<sup>28</sup> Committee on the Elimination of Discrimination against Women Concluding Observation, The Netherlands, CEDAW/C/NLD/CO 5, 5 February 2010, para 45

<sup>29</sup> Committee on the Elimination of Discrimination against Women Concluding Observation, Netherlands, CEDAW/C/ARG/CO 6, 16 August 2010, para. 42



Poverty of older women has also been an issue of concern for the Committee on the Elimination of Discrimination against Women. The Committee has recommended State parties to take appropriate measures to avoid poverty and to combat the marginalization of older women, including immigrant and migrant women<sup>30</sup>. In relation to labour rights, the Committee has called attention to the negative impact on women of specific legislation related to retirement and old-age pensions, particularly in relation to requirement of 45 years of contributing to the pension fund without incurring a loss in benefits<sup>31</sup>

On a different vein, the Committee has also urged state parties to take immediate and affective measures to investigate the incidences of torture and killings of older women, based on accusations of witchcraft or sorcery, to prosecute and punish perpetrators of such acts and to prevent their reoccurrence in the future. The Committee has also called for legislative review and enforcement of relevant legislation related to these killings.<sup>32</sup>

Violence against women has been understood to encompass, but not be limited to, physical, sexual or psychological violence occurring in the family, within the general community, or perpetrated or condoned by the State wherever it occurs.<sup>33</sup> Some elements of this definition could shed light on a better understanding of violence and abuse of older persons, its human rights connotations and its close link with discrimination.

### **c. Vulnerabilities and special measures of protection**

Beyond the prohibition of discrimination on the ground of age, human rights mechanisms have also identified older persons as being a vulnerable group requiring special measures of protection. Specifically, article 16(1) of the CPRD requires "age-sensitive" assistance and support for persons with disabilities and their families to prevent exploitation, violence and abuse, thereby recognizing the particular situations where older persons are vulnerable.

The CESCR has held that "[s]ide by side with older persons who are in good health and whose financial situation is acceptable, there are many who do not have adequate means of support, even in developed countries, and who feature prominently among the most vulnerable, marginal and unprotected groups."<sup>34</sup> Further, it has consistently included older persons in the list of groups that could potentially suffer disadvantages, vulnerability or marginalization.<sup>35</sup>

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<sup>30</sup> Committee on the Elimination of Discrimination against Women, see Concluding Observation, Iceland, A/57/38, 2002, para. 250; Concluding Comments, France, C/FRA/CO/6, Fortieth session 14 January-1 February 2008, paras. 38-39.

<sup>31</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Germany, CEDAW/C/DEU/CO/6, 12 February 2009.

<sup>32</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Papua New Guinea, CEDAW/C/PNFG/CO/3, 30 July 2010, para. 28.

<sup>33</sup> General Assembly Resolution 48/104

<sup>34</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 6, "The economic, social and cultural rights of older persons", cit., para. 17.

<sup>35</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 4, "The right to adequate housing", E/1992/23, 13 December 1991, para. 8 (e); General Comment No. 7, "The right to adequate housing: OHCHR- April 2011

The Committee against Torture has also specifically clarified that State parties should prohibit, prevent and redress torture and ill-treatment including, *inter alia*, in institutions that engage in the care of the aged.<sup>36</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has likewise underscored that the elderly are among the highly vulnerable in general detention facilities and in psychiatric institutions.<sup>37</sup>

In addition, the Human Rights Committee has noted “the vulnerable situation of older persons placed in long-term care homes, which in some instances has resulted in degrading treatment and violated their right to human dignity”<sup>38</sup>, while the Committee on the Elimination of Racial Discrimination acknowledged the particular impact on older persons of lack of basic foods and medicines, leading to grave suffering and malnutrition<sup>39</sup>

The examination of reports by the Human Rights Council under the universal periodic review mechanism has also lead to recommendations about the rights of older persons. Some States have been encouraged to dissemination good practices and existing policies and programmes<sup>40</sup> while other states has been called to intensify their efforts to eradicate poverty, improve access to services and pursue social policies for the elderly.<sup>41</sup>

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, has highlighted the vulnerability of older persons in detention facilities. As stated by the Special Rapporteur, “[m]any detainees complained that they felt like they were treated worse than animals. Indeed, most human beings would not like their dogs or cats to be treated in the same way that many human beings are treated in detention. [...] Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination”.<sup>42</sup>

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forced evictions”, E/1998/22, 20 May 1997, para. 10; General Comment No. 12, “The right to adequate food”, E/C.12/1999/5, 12 May 1999, para. 13; General Comment No. 14, “The right to the highest attainable standard of health”, E/C.12/2000/4, 11 August 2000, para. 12; General Comment 15, “The right to water”, E/C.12/2002/11, 20 January 2003, para. 16(h).

<sup>36</sup> See Committee against Torture, General Comment No 2, “Implementation of article 2 by States parties”, CAT/C/GC/2, 24 January 2008, para 15.

<sup>37</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. “Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention”, February 5, 2010. A/HRC/13/39/Add.5, para. 237.

<sup>38</sup> See Human Rights Committee, Concluding Observations, Germany, CCPR/CO/80/DEU, 4 May 2004, para. 17.

<sup>39</sup> See Committee on the Elimination of Racial Discrimination, Concluding Observations, Iraq (1997), para. 258, Fifty-second Session, Supplement No. 18 (A/52/18).

<sup>40</sup> See Human Rights Council, A/HRC/11/22, para.130.7; Human Rights Council, A/HRC/12/3, para. 80.21; Human Rights Council, A/HRC/15/15, para. 78.48-4.

<sup>41</sup> See Human Rights Council, A/HRC/11/25, para. 114.20; See the Human Rights Council, A/HRC/11/24, para.97.13; See Human Rights Council, A/HRC/8/25, para. 56.17.

<sup>42</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. “Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention”, February 5, 2010. A/HRC/13/39/Add.5, paras. 231 and 257.

The representative of the Secretary- General on the human rights of internally displaced persons noted with concern that the overcrowding, substandard housing and insecure tenure which are general issues for all internally displaced persons were compounded by the particular needs of certain vulnerable persons such as the disabled and the elderly who may have special housing requirements for whom housing impacts on their access to essential services.<sup>43</sup> He also called attention to the fact that persons who are dependant on others and have limited knowledge of legal procedure or limited access to local authorities, such as [...]elderly persons, may also have particular difficulties in obtaining certificates as internally displaced persons, or other necessary documents to access basic rights and services.<sup>44</sup>

A working paper prepared by a member of the Human Rights Council Advisory Committee notes that “elderly people, can be more vulnerable in natural disasters or situation of armed conflict” [...] “they are unable to escape because of disabilities, lack of mobility or lack of physical strength and become victims of violence and reprisals. They are left isolated, destitute and without support systems when families and communities disintegrate. Those unable to get to registration centers in camps frequently miss out on food and health programmes. Older asylum seekers, older refugees and stateless older people are therefore more vulnerable”.<sup>45</sup>

#### **d. Special measures for specific groups**

Some human rights mechanisms have addressed the human rights of older persons by acknowledging the need for age-specific measures. This does not necessarily require qualifying older persons as being in a vulnerable or marginalized situation: special measures can be understood as identifiable age-group requirements in comparison with other age-groups. For example, article 25(b) of the CPRD requires that health services be “designed to minimize and prevent further disabilities, including among children and older persons.”

Moreover, the CESCR has recommended that health policies take particularly into account the needs of the elderly, “ranging from prevention and rehabilitation to the care of the terminally ill”<sup>46</sup>, and has reaffirmed “the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. Such measures should be based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.”<sup>47</sup>

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<sup>43</sup> Report of the Representative of the Secretary- General on the human rights of internally displaced persons the Human Rights Council, Addendum in his follow-up to the visit to Azerbaijan in 2007, A/HCR/16/43/Add.2

<sup>44</sup> Ibid, para 50 and 70.c).e).

<sup>45</sup> See Working paper prepared by Ms. Chinsung Chung, Human Rights Council Advisory Committee, cit., paras. 19 and 20. See also the Inter Agency Standing Committee brief on Humanitarian Action and Older Persons (2008), paras. 24,28

<sup>46</sup> See General Comment No. 6, cit., paras. 34-35.

<sup>47</sup> See General Comment No. 14, cit., para. 25.

Similarly, the CESCR held that “older persons should have access to suitable education programmes and training and should, therefore, on the basis of their preparation, abilities and motivation, be given access to the various levels of education through the adoption of appropriate measures regarding literacy training, life-long education, access to university, etc.”<sup>48</sup>

With regard to the right to housing, the CESCR has endorsed some of the recommendations of the Vienna International Plan of Action on Ageing<sup>49</sup>, noting that “national policies should help older persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them”. The Committee has also underscored that urban rebuilding and development planning and law needs “to pay special attention to the problems of the ageing, assisting in securing their social integration”; and that there is a need “to take account of the functional capacity of the elderly in order to provide them with a better living environment and facilitate mobility and communication through the provision of adequate means of transport.”<sup>50</sup>

#### **e. The right to social security, and the issue of social protection**

Age plays a particularly prominent role in the right to social security and old age is generally acknowledged as one of the main “contingencies” or “branches” of social security in international law.<sup>51</sup>

The CESCR has recognized that old age is one of the contingencies to be covered by social security<sup>52</sup>, and held that “(t)he International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although article 9 which provides for “the right of everyone to social security, including social insurance”, implicitly recognizes the right to old-age benefits.”<sup>53</sup>

The CESCR has also clarified that the right to social security encompasses both contributory, insurance-type schemes and non-contributory, tax-funded schemes (sometimes referred to as “social assistance”).<sup>54</sup>

It has stated that the following elements are inherent in the right to old-age benefits:

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<sup>48</sup> See General Comment No. 6, cit., para. 37.

<sup>49</sup> Similar references are also found in the Madrid Plan of Action on Ageing, in priority direction III

<sup>50</sup> See General Comment No. 6, cit., para. 33.

<sup>51</sup> See ILO C 102, Social Security (Minimum Standard) Convention (1952), part V.

<sup>52</sup> See General Comment No. 6, cit., paras. 26-30; General Comment No. 19, “The right to social security”, E/C.12/GC/19, 4 February 2008, para. 15.

<sup>53</sup> See General Comment No. 6, cit., para. 10.

<sup>54</sup> See General Comment No. 6, cit., para. 30; General Comment No. 19, cit., para. 4.

- States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.<sup>55</sup>
- State parties should consider establishing a retirement age that is flexible, taking into account the national circumstances, the occupations performed – in particular work in hazardous occupations – and the working ability of older persons, with due regard to demographic, economic and social factors.<sup>56</sup>
- States parties must guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.<sup>57</sup>
- States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.<sup>58</sup>

The Committee has noted with concern the low coverage of old-age pensions and the broader lack of social protection systems for older persons.<sup>59</sup> It recommended for example to extend the network of integrated health and social care services, including home help, for older persons with physical and mental disabilities.<sup>60</sup> It noted the preference for home care in the context of poverty rather than institutionalization of older persons in need of care. In this context, the Committee has also recommended allocating sufficient funds and strengthening the role of non-profit organizations in the provision of home care and other social services.<sup>61</sup>

The Committee has also raised concerns about the potential discriminatory impact of old-age pension benefits on specific groups and for this purpose it has requested comparative statistical data on the levels of old-age pensions, disaggregated by sex, number of children, income groups and other relevant criteria, so as to enable an assessment of the pension benefits of women and of members of disadvantaged and marginalized groups who are frequently exposed to interruptions of their professional careers.<sup>62</sup>

<sup>55</sup> See General Comment No. 6, cit., para. 27; General Comment No. 19, cit., para. 15.

<sup>56</sup> See General Comment No. 6, cit., para. 28; General Comment No. 19, cit., para. 15.

<sup>57</sup> See General Comment No. 6, cit., para. 29.

<sup>58</sup> See General Comment No. 6, cit., para. 30; General Comment No. 19, cit., para. 15.

<sup>59</sup> See for example, Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of The Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Nicaragua, E/C.12/NIC/CO/4, Forty-first session Geneva, 3-21 November 2008, para. 22.

<sup>60</sup> Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of The Covenant, Slovenia, E/C.12/SVN/CO/1, Thirty-fifth session Geneva, 7-25 November 2005, para. 35.

<sup>61</sup> Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Serbia and Montenegro, E/C.12/1/Add.108, Thirty-fourth session 25 April-13 May 2005, para. 8.

<sup>62</sup> Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Austria, E/C.12/AUT/CO/3, Thirty-fifth session 7-25 November 2005, para. 25.

The Independent Expert on Human Rights and Extreme Poverty has recently addressed the issue of non-contributory or social pensions of older persons, as an important dimension of social security systems. This is the first report of a special procedures mandate focusing the attention on the situation of older persons. Her report stresses the low coverage of contributory pension schemes and highlights that “non-contributory pensions can significantly reduce poverty and vulnerability among old people, in particular for women, who live longer and are less likely to benefit from contributory systems”. It also provides recommendations to ensure that non-contributory pensions comply with core human rights standards.<sup>63</sup>

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has also considered the issue of exclusion of pension systems and recommended remedial measures.<sup>64</sup>

The Representative of the Secretary-General on the human rights of internally displaced persons raised concern about the lack or insufficient social protection of internally displaced older persons and noted the need to consider special measures to take into account the particular health and assistance needs of elderly persons, including those who are care-givers, as often older persons care for children left with them by their parents.<sup>65</sup>

#### **f. Universal design and accessibility**

The Convention on the Rights of Persons with Disabilities includes the concept of “universal design”, that is “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design”<sup>66</sup>, and develops State obligations regarding the promotion of the availability and use of universally designed goods, services, equipment and facilities.

The concept of “universal design” can benefit, inter alia, older persons, many of whom may also be persons with disabilities. In addition, State party obligations to ensure physical and communicational accessibility can also be of relevance to older persons. For example, inaccessible buildings or services restrict the possibilities of exercising freedom of movement both for persons with disabilities and for older persons, or for the combination of both: older persons with disabilities.

The CESCR has also identified accessibility – including physical accessibility – as a key component of the normative content of the rights contained in the Covenant, and has noted to

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<sup>63</sup> See Report of the Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda, A/HRC/14/31, 18 March 2010.

<sup>64</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, Mission to Japan, E/CN.4/2006/16/Add., 24 January 2006, paras. 91 and 56.

<sup>65</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin Addendum, Mission to Colombia, A/HRC/4/38/Add.3, 24 January 2007, para. 83

<sup>66</sup> See Convention on the Rights of Persons with Disabilities, article 2, final paragraph.

States parties that accessibility should be ensured in order to allow the full exercise of those rights by older persons.<sup>67</sup>

**g. The right to health and the right to adequate housing**

The Human Rights Council resolution 15/22 requested the Special Rapporteur on the enjoyment of the highest attainable standard of physical and mental health to prepare a thematic study on the realization of the right to health of older persons, including the main existing challenges and best practices. This report is due for the eighteen session of the Human Rights Council (September 2011). The Special Rapporteur has requested contributions from States and other stakeholders for the preparation of this study.

He has recently held an expert consultation (7 April 2011) with a focus on the following issues: legal capacity and informed consent; access to health care and chronic illnesses; home support and institutional care; palliative care; and other rights relevant to the right to health of older persons. The discussion aimed at gathering and focusing expert opinions on the legal interpretation of the above issues and on strengthening the understanding of the relationship between the right to health and the rights of older persons more generally.

The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health underscored the need for measures to ensure the enjoyment of human rights by older persons in relation to training of health professionals, to the design and implementation of national health systems compliant with a human rights based approach and finally in relation to pharmaceutical companies.<sup>68</sup>

Regarding the right to adequate housing, the former Special Rapporteur on adequate housing, developed Basic Principles and Guidelines on Development-based Evictions and Displacement calling for “[p]riority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities. [...] Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.”<sup>69</sup>

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<sup>67</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 4, “The right to adequate housing”, cit., para. 8 (e); General Comment No. 12, “The right to adequate food”, cit., para. 13; General Comment No. 14, “The right to the highest attainable standard of health”, cit., para. 12 (b); General Comment 15, “The right to water”, cit., para. 12(c)(i); General Comment No. 21, “Right of everyone to participate in cultural life”, E/C.12/GC/21, 21 December 2009, para. 16(b).

<sup>68</sup> Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, A/HRC/7/11, 31 January 2008, para. 42.; A/63/263, 11 August 2008, Annex para. 5

<sup>69</sup> Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, Basic Principles and Guidelines on Development-Based Evictions and Displacement, A/HRC/4/18, 5 February 2007, Annex I, paras. 31 and 33.