
http://social.un.org/ageing-working-group

In August 2014, ABA President William Hubbard appointed me to serve as the ABA representative to the U.N. Open-Ended Working Group on Ageing which is charged with considering avenues to strengthen the protection of the human rights of older persons. I succeeded William L. Pope who served in that role since 2012. The appointment and participation of a liaison, supported by the Commission on Law and Aging, has been the primary implementation strategy for the resolution adopted by the House of Delegates in August, 2011, that states:

RESOLVED, That the American Bar Association urges the United States Department of State and the United Nations and its member states to support the ongoing processes at the United Nations and the Organization of American States to strengthen protection of the rights of older persons, including the efforts and consultations towards an international and regional human rights instrument on the rights of older persons.

In my capacity as liaison, I have attended the annual meetings of the Working Group in 2015, 2016, and the most recent one, the 8th Session of the Working group, held July 5-7, 2017 at the United Nations in New York City. This memorandum summarizes the proceedings of that meeting, in which I was accompanied by Charlie Sabatino, Director of the Commission on Law and Aging.

This year, for the first time, a number of “A” status National Human Rights Institutions (NHRIs)\(^1\) were permitted to participate in the meeting in their own capacity, thereby expanding the discussion among Member States and non-governmental organizations (NGOs). Eight NHRIs from 3 different regional groups participated in the attended the meeting, along with 69 representatives from 33 NGOs.

The 8th Session began with housekeeping issues, most notably the election of officers, including the election of a new chair, Ambasssador Martín García Moritán, the Permanent Representative of Argentina to the United Nations. The first general session consisted of interventions (i.e., comments) by States that reflected a continuing divergence of views as to whether a special convention on the rights of older persons is needed, with an affirmative position advocated most forcefully by several Latin American states and others. Other states, including the USA and much of the European Union, prefer to focus on sharing best practices as a more practical strategy for improving the situation of older persons.

The body of the meeting was organized around two presentations followed by interactive

\(^1\) “A” status NHRIs are accredited by the Global Alliance of National Human Rights Institutions (GANHRI) and are in full compliance with the Paris Principles, as endorsed by the General Assembly in its resolution 48/134 of 20 December 1993. GANHRI’s membership consists of 117 NHRIs of which 74 are “A” status. There are no NHRIs in the United States.
discussions on the focus areas of: Equality and Non-discrimination, and Violence, Neglect and Abuse.

Equality and Non-discrimination

The opening expert panel on the topic of Equality and Non-discrimination consisted of presentations by:

- Rosita Kornfeld-Matte, the Independent Expert on the Enjoyment of All Human Rights by Older Persons;
- Craig Mokhiber, Director of the New York Office of the Office of the High Commissioner for Human Rights and Deputy to the Assistant-Secretary-General for Human Rights;
- Anna Chabiera, Senior Specialist in Department for Equal Treatment, Office of the Commissioner for Human Rights, Poland;
- Matthias Von Schwanenflugel, Head of Directorate General Demographic Change, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth Germany;
- María Soledad Cisternas Reyes, former Chairperson of the Committee on the Rights of Persons with Disabilities Interactive Discussion.

The panel provided valuable insights from different perspectives, including the perspective of human rights treaty body systems, the current framework of international human rights law, national and regional experiences, and the specific human rights mandates and the national human rights institutions. A recurring theme in the interactive discussion among all participants was that, although the general principle supporting the right to equality and non-discrimination is included in most (but not all) of the constitutions and national laws, as well as in several human rights treaties, in almost no cases are there specific references to the right of equality of older persons and to non-discrimination on the basis of age. Furthermore, where those specific provisions do exist, they are usually limited in the scope of application, such as in employment, or in the Convention on the Rights of Migrant Workers.

The discussion here and throughout turned to the pros and cons of developing a new international legally binding instrument. While some delegations presented best practices at the national and regional level aimed at protecting older persons, particularly with regards to their right to equality and non-discrimination, several States, NHRIs, and NGOs stated that developing a specific protection regime of the rights of older persons at the international level would provide coherence to an otherwise fragmented, uneven and incomplete landscape of legal norms.

The comments of the NHRIs and NGOs, including those made in my capacity as liaison, uniformly insisted that a new instrument with specific, universally applicable standards related to the human rights of older persons would clarify State’s obligations with regards to the protection and promotion of the human rights of older persons, promote greater engagement of older persons as rights holders in civic life, establish effective monitoring mechanisms for ensuring accountability and redress, and provide consistent and systematic protection against rights abuses that affect a large number of older persons globally.
Violence, Neglect and Abuse

This session began with an expert panel, again featuring Rosita Kornfeld-Matte, the Independent Expert on the Enjoyment of All Human Rights by Older Persons, along with:

- Rio Hada, Team Leader of Economic, Social and Cultural Rights, Development and Economic and Social Issues Branch, Office of the High Commissioner for Human Rights
- Kay Patterson, Age Discrimination Commissioner, Australian Human Rights Commission
- Lora Vidovic, Ombudswoman of Croatia, Chair of European Network of National Human Rights Institutions Interactive Discussion

The panel highlighted the importance of this issue, as well as its prevalence and the fact that there is not much information available due mainly to underreporting and to the lack of standardized criteria and legal provisions for measuring these violations.

In the panel presentation, it was noted that according to estimates of the World Health Organization, 1 in 6 persons aged over 60 years is suffering from abuse. That means nearly 141 million people globally, and this number might be much higher due to the fact that violence, neglect and abuse against older persons is one of the most hidden and underreported violations. The same WHO estimates indicate that nearly 80% of the cases are not reported due to shame and lack of awareness or information. Furthermore, with projections indicating that the number of older persons will almost double by 2050, the prevalence of this scourge could represent more than 320 million people worldwide.

One of the complexities highlighted by several delegations is the reality that older women, in particular, frequently suffer from multiple, intersecting and exacerbated forms of violence and discrimination, and because there is such a dispersion in the current universe of the human rights mechanisms, some of the overlapping causes of violence and abuse against older women are simply not recognized.

The discussion of this topic again revealed a split among States in their views on the need for a legally binding and enforceable international instrument. A few States in opposition to a new instrument argued that embarking on a new rights instrument would divert attention and resources away from taking more feasible, immediate and effective steps to strengthen the rights status of older persons. But the contrary view was voiced more widely – that both efforts should be complementary, and that discussions on the feasibility and possible elements of a new instrument does not prevent States from complying with their existing international obligations on human rights.

The final session of the meeting considered the way forward for the Working Group. Delegations expressed their satisfaction with the development of the session under the format of having substantive discussions revolving around two focus areas which directly affect the enjoyment of the human rights of older persons. A discussion of issue areas for the next meeting of the Working
Group resulted in selecting “autonomy and independence” and “long-term and palliative care” as the two focus areas for the 9th Session. During the inter-sessional period, the Bureau plans to make a call for inputs on the two focus areas, which will then be summarized and analyzed by the Secretariat (DESA and OHCHR) in order to guide the discussions in the ninth session.

The Chair also advised that the Bureau will make a call for substantive inputs in the form of normative content for the development of an eventual international standard regarding the topics discussed in the present meeting: the protection of the rights to equality and non-discrimination and the right to live free from violence, neglect and abuse. Then, during the 9th Session the Working Group will consider and discuss such normative elements received. In other words, the next session of the Working Group will include a segment for discussing the normative inputs received with regards to the focus areas for of the current session, as well as two interactive discussions on the new focus areas selected for the ninth session.

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Attachments: Transcripts of Oral Statements
Thank you, Madame Chair. We appreciate the opportunity to speak, and congratulate you and all who have taken on new leadership roles in the Open-Ended Working Group.

Discussion at the Eighth Session is focusing on the topics of non-discrimination, on the one hand, and freedom from abuse and neglect, on the other. The American Bar Association strongly supports the Working Group’s decision to focus on these areas at this time, as we recognize that issues of discrimination, abuse, and neglect have long plagued and continue to plague older persons worldwide, to the substantial detriment of both those persons and their societies.

Let us consider just one of the related issues. Elder abuse is a complex social issue but also a mortal menace and a societal shame. Research in the United States tells us the following:

- 1 in 10 seniors is abused each year in the US.
- Only 1 in 23 cases of elder abuse is reported to Adult Protective Services.
- Elder abuse leads to a 300 percent increase in premature death and untold suffering for victims.
- Those who have suffered elder abuse are admitted to nursing homes at four times the rate and hospitals at three times the rate of those who have not suffered such abuse.
- Financial exploitation costs seniors almost $3 billion a year in the US. It impoverishes victims, leading to increased reliance on family resources and social safety nets.
- Elder abuse makes victims more dependent upon caregivers in a downward spiral, with a corresponding toll on caregivers’ physical and mental health, employment, and financial security.

Older persons, especially those with diminished capacity, are often seen as prime targets for scam artists, criminals, and abusive persons, including members of their own families and caretaker groups. Despite this, the justice system is significantly under-equipped to respond to elder abuse and exploitation in that, for the most part, law enforcement officers and prosecutors lack training and expertise, the courts are already straining under the numbers of other cases it must handle, and courts often do not see these cases as a priority. There is a severe shortage of resources to address the wrongs committed by exploiters and abusers. Exploited elders, because of their compromised medical, social and financial circumstances, have limited ability to access the justice system.

In keeping with our mission as one of the world’s leading voluntary associations of lawyers, the American Bar Association would like to identify some key elements of access to justice that must form a foundation for any principles seeking to address elder abuse. In particular, older persons need:
1. Effective access to information about their legal rights;

2. Effective access to competent legal advice and representation;

3. Effective, affordable, and timely access to justice institutions;

4. Effective access to fair, impartial, and timely justice procedures; and

5. Effective enforcement of remedies declared by national, state, and local judicial systems.

Without access to justice, any principles for dealing with discrimination, abuse, and neglect — no matter how forcefully stated — become nothing more than persuasive window-dressing that does little to change people’s lives. Strong substantive rights lacking effective procedural protections are empty promises. We have guidelines, including the 1991 UN Principles for Older Persons. We now need law.

Thank you.

Oral Statement of
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Thank you. We have heard many examples over the last three days of the need for greater protection of the human rights of older persons. We have clear evidence that the current international human rights system is failing millions of older persons, and universal recognition that the global senior population is growing rapidly. Despite this, some argue that existing norms, such as those in the Universal Declaration of Human Rights or MIPA, are sufficient if used properly. Let us look at that proposition.

If we turn to the Universal Declaration, protection of older persons from abuse would likely be addressed as a violation of human dignity under Article 1 or a violation of personal security under Article 3. One can make those arguments, but they are attenuated, indirect, and difficult to use if you wish to persuade those who are not already convinced.

While no convention on human rights for older persons has been drafted, it is not difficult to imagine that provisions relating to abuse of older persons could include the following elements:

1. A prohibition against all forms of exploitation, violence, abuse, and neglect of older
persons, whether physical, psychological, financial, or social, including those forms deriving from a combination of age with other factors, including gender, class, ethnicity, religion, and the like. This provision would apply with particularity to family members and caregivers.

2. A prohibition against all forms of medical abuse against older persons, including non-consensual treatment, medication, experimentation, institutionalization, and exclusion from medical research.

3. A prohibition against denial of medical treatment, including appropriate palliative care, to older persons or limitation of medical treatment on the basis of the age of older persons.

4. A right to recovery, rehabilitation, and reintegration for older persons who have suffered any form of abuse.

5. A right to have appropriate and timely training for all persons involved in providing care and related services to older persons, including all judicial and law enforcement officers.

These kinds of provisions would clearly be more effective, in that they are specific in referencing older persons, they are particular in identifying common types of abuse, and they are precise in prohibiting those forms of abuse and providing for affirmative obligations of recovery, rehabilitation, and reintegration for older persons who have suffered abuse.

Existing norms lack the specificity necessary to make standards tangible and meaningful. Unless we clearly articulate the nature and extent of legal obligations to protect the rights of older persons, abuse will continue unabated. An exhortation to respect the dignity of older persons is high and noble, but does little to provide the examples, education, and training needed to make these rights real at ground level.

Morality tells us to do good and avoid harm. Law gives us the details of what these terms mean, and when we need to be attentive to carrying out these obligations. The American Bar Association strongly urges that it is time – indeed past time – for the international community to turn to law in protecting the world’s growing population of older persons. We need an international convention that provides specific, particular, and precise protections to the world’s aging population.