



Expert Discussion on Defining the Group of Older Persons

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Never Stand Still

Law

**A new convention on human rights in older age:
unnecessary, dangerous and counterproductive,
or an essential strengthening of the international
human rights framework ?**

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Overview

1. **Reprise – why we need this new convention: conceptual, substantive and institutional reasons**
2. **Why is the CRPD not enough?**
3. **The question of definition again – whether, why and how?**
4. **Dangers in drafting a new convention – undermining existing standards?**
5. **Let's talk resources**

1. Reprise – why we need this new convention: conceptual, substantive and institutional reasons

Existing treaties are not doing the job and cannot be expected to

‘The job’

Responding to the huge changes in the nature of the world’s populations and social arrangements and patterns of violation – must respond in human rights terms given social, economic, political and personal implications (see *Global Report on Ageism*,

Substantive coverage in existing treaties is imply not good enough:

- inadequate attention to older age and that attention is incoherent, unsystematic and generally not sustained.
- existing human rights are built on **flawed conceptual foundations** that neglect fundamental aspects of the social reality of human rights and older age – ageism, outmoded ideas of life progression and stages, intersectionality and age.

A thematic convention would make a **unique and significant difference for all**.

Importance of the treaty for Asia and Pacific region (and others) where half the world lives and does not have the benefit of regional human rights protections.



2. Why is the CRPD not enough?

- Ageism is not ableism
- Not all older persons have a disability - and they may be denied their rights on a range of age-based assumptions
- Not all persons discriminated against on the basis of their age have a disability that forms the basis of the discrimination
- Many older persons who do acquire an impairment and disability do so in later life – they may not identify differences in perception and self-identification as a person with disability
- The CRPD Committee is overloaded with work and issues – there are many priority topics for persons with disabilities at every age that are less so for older persons.
- Yes, there are overlaps, but they also operate in separate spheres.



3. The question of definition again – whether, why and how?

- We need to define the scope of a convention and to identify potential rights-holders.
- Still different views over scope – ‘retirees’ or near ‘retirees’ only, or a broader notion of ‘older’/’older age’ that reflects diversity in age ranges and their social meaning
- My view – we need broad convention re older age that would include both groups – so a combination of definitions that allows flexibility.



3. The question of definition again – whether, why and how?

Two components

1. Discrimination against a person because of ‘older age’ requires a description of ‘older age’ and its actual or assumed attributes

‘Older age’: ‘social construct of the last stage of the life course’ (Inter-American Convention) – not expansive enough, as desirable to cover ‘mid-life’ and the ‘perpetrator perspective’ – ‘old age is in the eye of the beholder’

“Older person”: A person aged 60 or older, except where legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years. This concept includes, among others, elderly persons. ‘ (Inter-American Convention)



3. The question of definition again – whether, why and how?

Two components

2. Governmental need for flexibility but also level of certainty in order to define eligibility for access to benefits that are designed for persons in later stages of life ('post paid labour force participation' age)

- If we are not simply to adopt a system such as a universal basic income, then some criterion needs to be employed.
- Could it simply be a decision left to governments, to decide when specific benefits kick in, for example access to pensions or other benefits ? An age would be a useful proxy, though not the only one...
- Pending court case in Australia brought by Aboriginal man who wants pension age (67) be lowered for Indigenous Australians who have a lower life expectancy than non-Indigenous Australians.



4. Dangers in drafting a new convention – a danger of undermining existing standards?

- Negotiating rule of thumb: **starting-point** must be that there should be **no regression in standards** – some controversial areas are likely to come under further scrutiny (for example, legal capacity and related issues) and some may seek to reopen these issues through the back door of a new treaty.
- Various areas in which further adaptation and explanation of general human rights standards will be useful (right to palliative care; digital issues; business and human rights, among many others)
- Possibility that those who adopt an **oppositional stance** to human rights more generally will use the occasion to pursue a broader agenda of undermining rights.



5. Let's talk resources

- **Focus:** on resources to run a new treaty body and system institutionally and operationally (not program expenditure at the national level), an important subtext
- **International level:** no money at the international level and current human rights system is overburdened – where is extra money to come from ? States need to actually put up relatively small sums of money.
- **Resources at the national level** – excessive burdens for States and limited expertise, especially for small States – ways of overcoming these.
- And then there are broader concerns about the **government expenditure** required -- which brings us back to 'Go', the function of a definition as a means of predicting and controlling budgetary expenditure.



END

