



**Statement of Mr. Craig Mokhiber
Office of the United Nations High Commissioner for Human Rights**

**Open-ended Working Group on Ageing for the purpose of strengthening the
Human Rights of Older Persons (GA res. 65/182)**

Second working session, New York, 1-4 August

PANEL ONE: Discrimination and multiple discrimination

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Excellencies, distinguished delegates and experts,
Ladies and gentlemen,

The General Assembly resolution 65/182 establishing this OEWG, also requested the Secretary-General to prepare a report on the situation of the rights of older person in all regions of the world. While this report will be discussed in detail in the upcoming session of the General Assembly and Third Committee deliberations in October, I thought I would highlight a few of our findings- recorded in the report that are relevant to age discrimination and multiple discrimination.

In February we sent a note verbale to States, relevant bodies and organizations of the United Nations system, as well as intergovernmental, non-governmental organizations and national human rights institutions to seek input for the report. The note verbale included a questionnaire of nine points soliciting observations and information on existing legislation, policies and programmes related to various human rights issues related to older persons. Over 75 written contributions were received, including over 40 from member states, and others from United Nations entities, national human rights institutions and non-governmental organizations, coalitions and other groups. [All submissions to the report are available online in OHCHR's web site, as well as the advanced unedited version of the report. The latter is also available in the OEWG web site.]

Contributions to the report reflect on a broad range of national legal, social and economic situations. They make clear that, in the last decade, the challenges and opportunities of population ageing have led to a host of new policies and programmes, particularly in the health, social security and welfare sectors. They show that the situation of older persons between and within Member States varies widely, and that older persons themselves represent a diverse group. However, it is equally clear that the phenomenon of age-related discrimination around the world, is one of the most frequent challenges faced by older persons, and by persons in their ageing process. In sum age-discrimination is a global problem.

Formal and substantive discrimination, discrimination in law and in practice are essential entry points for human rights analysis. Indeed, the prohibition of discrimination is one of the pillars of international human rights law.

Under international human rights law, discrimination is 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.

At the international level "age" is not explicitly listed as a prohibited ground of discrimination in most human rights treaties. However, these lists are intended to be illustrative and non-exhaustive, and most include an open-ended category (for example "other status"), under which treaty monitoring bodies have considered age-related discrimination.

And, of course, when age is accompanied by other dimensions that define identity in society—including sex, race and ethnicity, religion, disability, nationality, health and socio-economic condition, multiple discrimination occurs, exacerbating negative impacts on the enjoyment of all human rights. Submissions to the SG report have noted the compounded dimension of discrimination based on age plus sex, ethnicity, disability or health conditions, as well as the dire situation of older persons who are poor, those living in rural areas, and divorced, widowed or single older persons, particularly women.

Importantly, the report shows, Mr. Chairman, that even where there is recognition of the essential role older persons play as custodians of culture and history, or the contribution they continue to make to society as care-givers for children, for example, they nevertheless face prejudice and stigmatization, which remain broadly tolerated in societies across the world.

Ageism is wide spread in employment, and legislation by itself has not eliminated age-related employment discrimination. And indeed, a common complaint brought to national human rights institutions by the denial of employment, interviews or other job opportunities on the basis of age.

As we have noted before, existing international human rights standards and principles do apply to the protection of older persons against discrimination in the exercise of their rights. Several core human rights treaties include relevant provisions and provide no limitation whatsoever in relation to old age. All are solidly grounded in the principle of equality and non-discrimination. Some have already been applied to the specific circumstances of older persons. And a few treaty mechanisms have developed specific applicable standards, on the basis of generally recognized rights and principles.

The Committee on Economic, Social and Cultural Rights (CESCR) has held that "(a)ge is a prohibited ground of discrimination in several contexts". In 1995 it adopted a general Comment No. 6, and has highlighted the need to address discrimination against unemployed older persons, older persons living in poverty, and those with unequal access to universal old-age pensions due to their place of residence.

Also, significantly, article 26 of International Covenant on Civil and Political Rights (ICCPR) provides for the protection of equality before the law, including a guarantee for effective protection against discrimination on any ground, and the Human Rights Committee has held 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 article 26", and has confirmed this approach in its consideration of a number of individual communications.¹

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, whether the legislation is related to an article in the ICCPR or any other instrument, including a right under the International Covenant on Economic, Social and Cultural Rights (ICESCR).²

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

Most recently, the Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 27³ on older women and the protection of their human rights under the CEDAW.

These efforts by existing treaty mechanisms are grounded in law, authoritative and essential to protecting the human rights of older persons. They remain, however, ad hoc, fragmented and inadequate. And, it has been repeated that, to date, there is still no central, comprehensive and targeted treaty or mechanism dedicated to the very particular challenges of older persons in the exercise and enjoyment of their rights.

We have already commented on the paucity of data, and this absence of a dedicated regime at the international level, perpetuates the data problem. Discrimination hides- finding it, remedying it and preventing its occurrence requires a dedicated focus.

At the national level, a numbers of Constitutions expressly recognize the principles of equality and non-discrimination vis-à-vis older persons. Some include an explicit reference to "age" as a prohibited ground of discrimination, while others guarantee protection under the general non-discrimination clause of "any other grounds". Some national constitutions also contain explicit references to older persons and to specific applicable rights, including in recently drafted Constitutions with provisions on the protection of older persons against violence and abuse, life-long pensions and care, cultural rights and rights of participation.

¹ See Human Rights Committee, *Love et al. v. Australia*, Communication No. 983/2001, views of 25 March 2003, and also for example Human Rights Committee, *Schmitz-de-Jong v. The Netherlands*, Communication No 855/1999, views of 16 July 2001; *Solis v. Peru*, Communication No. 1016/2001, views of 27 March 2006; *Althammer et al. v. Austria*, Communication No. 998/2001, views of 8 August 2003.

² 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.

³ See General Recommendation No. 27, "Older women and protection of their human rights".

Many submissions also identify laws containing specific provisions for the protection of the human rights of older persons. In some cases, national legislation has been enacted based on regional directives addressing non-discrimination.⁴, while in others it has been brought about by local governments, with decentralized authority, in order to define services and meet legal responsibilities for ensuring assistance, early detection of violence and abuse, and for reporting and responding to the situation of older persons. There are also specific community decrees and regulations to combat discrimination based on age.

Contributions to the report cover a range of initiatives and measures at the national and local levels, many put in place specifically to eliminate discrimination against older persons, particularly as it relates to employment, retirement, vocational training and membership in professional or community organizations.

Some States have developed legislation to combat age-related discrimination or any distinction not justified objectively for a legitimate purpose. Interestingly, some anti-discrimination laws also address *indirect discrimination*, or the existence of criteria, practices or provisions which appear neutral on their face but in fact disadvantage a person of a specific age. Creative national initiatives to combat stigma, discrimination and violence against older persons have included films portraying a positive and holistic image of ageing and the publication and wide-distribution of leaflets to increase awareness about abuse, and related stigma and discrimination. In some countries, courts have upheld the prohibition of age-discrimination and secured the rights of older persons.

As the Secretary-General's report shows, the phenomena of ageism and age discrimination are global realities that are challenging the dignity and rights of older persons everywhere. As the problem grows with the ageing of populations across the globe, creative responses have been developed at the national and international levels.

These experiences offer important insights and lessons, and they are to be encouraged. At the same time, Mr. Chairman, they also point to the urgent imperative of ensuring an effective international protection regime to ensure the rights of older persons without discrimination.

I thank you for your time

⁴ See for example the principle of equal treatment in relation to age, in the 2000 European Union Directive on Discrimination, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

