

10TH SESSION OF UNITED NATIONS OPEN ENDED WORKING GROUP ON AGEING

REPORT ON NORMATIVE CONTENT DISCUSSIONS-10TH UN OEWGA

–DAY 3/CLOSING DAY4

10:00 am - 1300 Morning Plenary

UNDESA acknowledged the receipt from Member States and NGOs of Substantive inputs in the form of normative content for **long term and palliative care** and **Independence and Autonomy** which is posted online. The Chair emphasized the importance of a compilation of document and the relevance of definitions of autonomy and independence and normative standards and what are the human rights instruments eg CRPD and the necessity to see where there is lack of relevance to older persons

Inputs were called for in December by Chair. DESA and UNHCHR drafted questions.

81 submissions were received on normative inputs (up from 18 last year). Member states' input doubled.

The working document covered:

1. Overview of submissions
2. Conceptual distinctions eg right to long term and palliative care - some overlap but are not identical
3. Definitions
4. Affirmation of rights with normative rights proposed
5. State obligations for these two focused areas

Mr. Rio Hada, Team Leader, Department of Economic, Social and Cultural Rights, UN OHCHR, presented an over view of documents received on Key normative elements as follows:

He indicated that document as presented is from submissions received which though not comprehensive survey, represents good sample.

IDENTIFIED COMMON ELEMENTS

1. Submissions indicate that there are varied picture at national level - some under Constitution; others in general guarantees of human rights agreements; long term care is different - whether or not they are underpinned by human rights; cultural expectations on informal family care for long term care; palliative care also varied widely with lack of legislation
2. Normative gap in terms of existing human rights treaties which do not provide clear definitions for autonomy and independence and limited application from existing instruments. InterAmerican Convention relates only to that region.
3. Rights are complex and inter-related with other human rights. May need to consider these rights in conjunction with all rights eg responsibilities of private actors and of states to take appropriate measures to ensure that private sector actors respect rights of older persons
4. Autonomy and independence - international treaties do not provide clear definitions and different ways that these rights are treated eg in CRPD vs InterAmerican Convention
5. Legal capacity and its exercise - many referred to CRPD which has pioneered this concept for PWD. Future standards should build on the CRPD.
6. Normative elements includes: eg right to personal autonomy; right to have legal capacity to make own decisions; where and with whom to live; right to full and effective and meaningful participation in all aspects of life
7. Right to equality under law; making a legally binding document express their will; right to express their decisions; safeguarding; remedies and safeguards should be included

State obligations:

1. Relate to specific elements of the normative elements and their implementation
2. Ensure mechanisms support their rights
3. Communities are age sensitive
4. Access to support services for independent living
5. Living in shared residential settings - services permit right of autonomy
6. Execute legally binding directives eg a will
7. Ensure that they have access to effect complaints mechanisms
8. Ensuring that national laws recognize right to legal capacity
9. Access to service to exercise legal capacity; with complaints mechanism

Long term care and support common agreement:

1. Includes provision of care and support in all settings not just in the home
2. Goal: right of autonomy and independence
3. Draw from Right to Health and to Social Security
4. Definition: preferable to adopt a broad definition of this right eg InterAmerican Convention adopted a narrower scope only to those residing in long term care residences
5. Affordability, acceptability, holistic nature, adapted to individual needs, non discrimination, maintain dignity
6. Should consider right to information. To choice of care of support services regardless of income; regardless of income level

Elements proposed:

1. Similar to other topic
2. Ensure affordability and provide access to information on care
3. Access to information to make legally binding documents and choose type of care
4. Public awareness and access to effective complaint mechanisms

Palliative care:

1. Warrants separate care due to specificity of it
2. Two definitions from broader WHO and from narrower InterAmerican Convention
3. Provide services and support on it
4. Without discrimination
5. A new area without many existing normative elements to draw on; some provided national laws and experiences
6. Ensuring that older persons are not submit to torture in long term care
7. Allocate regular funding
8. Accessible medicine and technology
9. Advanced directives and living will
10. Training for caregivers
11. Need to regulate and monitor service providers
12. Ensuring access to complaints mechanisms

Comments indicate richness of the topic. We tried not to summarize too much but to capture wide breath of submissions. Welcome suggestions for improving document, analysis for your guidance to support your deliberations.

Comments:

Mauritius: Legal instrument is necessary. We have implemented measures as part of national strategy for older persons recognizing their experience and skills. Enhanced non comprehensive social security for PWD and those bed ridden (given monthly assistance, etc plus palliative since 2017 only offered to cancer patients; expansion is envisioned to community users care. OEWGA - We fully support it and should have a legal instrument and time is of the essence and need to move process forward. Resolution OP 1 and 2 - wondering if we should come up with proposals to the GA and if we should come up with a preparatory committee to begin drafting.

Costa Rica: described InterAmerican Convention articles. We have adopted law on older persons' autonomy and in care homes and rights to social protection. With a binding international instrument it would help states support these rights. We call for a legally binding instrument.

Spain: Asked the Bureau about our model for protecting older persons via Constitution right to health and have two laws for universal and free care and a provision on the rights of older persons in a state of dependence and refers the right to autonomy. We have a co-payment system and are working to eliminate it for older persons. Have provisions for rehab. Provision for older persons over their care. Question: about level of appeals which he has not heard about this here. Nothing about assisted dying.

Ecuador: 35% need palliative care which we have strengthened for various needs. Since 2015 have had palliative care with those with basic training. It should be linked with public and private services. It is a priority and a challenge with the ageing population especially for those with chronic diseases. Need a global instrument for all countries.

Slovenia: pleased by number of inputs on possible normative elements. Clear sign that we need to look for an international instrument. Encourage all stakeholders to remain engaged. Different parts of UN agencies are becoming engaged to strengthen rights of older persons in their work. **2012 OHCHR outcome paper on normative law is a good basis and favor for it to be updated.**

Dominican Republic: Ageing is the worst of dictatorships and it is up to us going toward or have reached old age, make clear that universal instruments will be binding.

Germany: well written documents from UNDESA. We haven't decided on whether or not to support a Convention. Need answers: how are we going to answer them eg in para 9. Suggest that we have more time and space to discuss these questions and answers - have a panel balanced with NGO and NHRIs to do this to find common ground. Also asks for update of 2012 OHCHR report on legal and implementation gaps.

National Institutes of Human Rights of Germany, PHILIPPINES, Haiti:

We note that only one meeting to discuss normative issues and need at least 2 for next year and a panel to respond to any working paper submitted to next year's session. They provide excellent basis for our discussion. Working Paper - should not fall below existing human rights law but build on them. Noted agreement on palliative and long term care are clear examples of gaps in existing human rights law that requires a new legal instrument. Normative elements from Session #9 and #10 be retained for future discussion and be captured in a summary outcome document and support updating of 2012 OHCHR paper.

National Commission for Human Rights of Nigeria:

Proposes need for monitoring provisions remedies at NHRI at the local level and monitoring and accountability by states and include information in the CPRs. Primary responsibility lies with member states. Children and family care responsibilities for support should be acknowledged. Supports a legal instrument and the time is now to walk the talk.

AGE Platform Europe: thanked work of UNDESA. Multiple barriers that older persons face have been enumerated. Must recognize right to affordable and holistic care promoting safe and accessible care and fund social protection schemes and right to palliative care without discrimination in all settings. Support chair's proposal in an outcome document.

3:00 pm official last session

Item VII. Other Matters

The Way Forward

South Africa on behalf of the Group of Friends of Older Persons at the UN in NY:

Proposal of concluding each session on outcomes to reflect arguments on each area. OEWGA para 28 has the clear mandate to consider existing human rights framework and identifying possible gaps ...including by considering further instruments and other measures. 7th session, membership supported holding discussion on specific issues. We began a new approach in the 8th session with focus areas on equality, non discrimination, violence and abuse. 9th session we had discussion on normative elements on these topics. Chair requested input from two questionnaires. Bureau prepared two compilation papers to guide discussion on normative elements. We believe that the chair's proposal of having an outcome document is appropriate. It is based on the mandate established. Document should reflect our arguments based on member states' input. It will be an important tool to identify standards. We are looking forward to having an outcome document in the next session.

Chair: Expressed the need for a tool that can follow up and realize rich points of the debate. It could be negotiated by member states and adopted by consensus. Content of the outcome document could capture most valuable aspects of normative viewpoints discussed by member states and later referenced for the development of standards. The document could begin with violence and discrimination addressed by 8th and 9th sessions. The outcome document based on contributions from member states from the 9th session, could be a concise two page document covering rich debate emphasizing common focus areas. It would not have any binding effect but would be a way to identify existing elements

It would be elaborated by the advice of DESA and OHCHR. It can be a declaration with two sections:

- 1) Essential matters of the topics with sources identified by member states at past sessions eg definitions or the forms of abuse against older persons and
- 2) Recognize necessary measures for member states to consider meeting identified standards. Process of negotiations: not to have it during the 4 day meeting but take place prior inter-sessional period.

For modalities for negotiations , the bureau welcomes the views of member states.

EU: Welcome efforts to ensure efficiency of this group. We have questions: would like to know more basis of content of any outcome document. Who will prepare it?

Negotiations during inter-sessional period; when would they take place? How will it be organized? Would focus issues of 9th session be addressed in the 12th session?

Russian Federation: reiterate the position we laid out in letter in February. Support the current OEWGA to exchange best practices from states and from civil society. Do not support as premature as we lack consensus on fundamental issues eg what is the age of older persons? Clash could threaten OEWGA. It is sufficient to recognize the rights of older persons eg MIPPA which covers all aspects of lives of older persons. Procedural issues: any change to working group's mandate must be strictly established in UNGA's Third Committee via a resolution.

Austria: aligns with EU. We have heard and contributed to the focused topics. Member states still demand more clarity on normative issues in light of technology. Wants an update of 2012 on normative gaps of OHCHR.

Holy See: questions and doubts on an outcome document. OP 28 of 65/182 resolution must be considered with 67/139 adopted two years later which requests the UNGA a proposal with main elements that should be included in an international instrument to address gaps. Further instruments are linking to legally binding instrument unless the outcome document links to this but there is no agreement in the group. Second issue: DESA and OHCHR involvement - he raised a question of the OHCHR which has a LGBTI membership. 3) concerns - a. Clear that there is no agreement on which gaps exist; b. Existing international law is sufficient and avoid further splitting of human rights. C. Implementation should be our focus. D. Controversial issues eg assisted death which do not enjoy agreement.

Slovenia: pleased with increased number of participants in the OEWGA. More convinced that this group must have concrete outcomes and supports chair's proposal. We will work alongside others during intersessional period. We are convinced of the need of a dedicated international instrument to protect the rights of older persons.

Uruguay: We fully support your proposal of an outcome document which would strengthen our work. It would not focus on controversial issues but on consensus one. Older persons cannot wait. We must make progress.

El Salvador: Noted excellent participation of civil society and NHRIs. Proposal would focus on non controversial issues and was adopted without disagreement at the 9th session. We must make progress. Draft should be elaborated jointly by the Bureau, UN Programme on Ageing in DESA and OHCHR.

Argentina: We should move toward specific results at the end of each session. Working on new documents does not mean ignoring existing ones. Suggests a panel to give broader guidance and on international legislation appropriate to our work. Congratulated member states for the December resolution.

China: Supports seeking consensus in a transparent manner. We believe that a chair's summary and UNDESA and UNOHR documents are sufficient and that there is no need to have an negotiated document. OEWGA should conduct its work under GA resolutions.

Costa Rica: endorse statement by South Africa. Variety of instruments and non binding agreements are insufficient. Regional progress is geographically limited. Older persons cannot use wait around or be left behind. Supports and international instrument.

Paraguay: supports chair's proposal. We are ready to take a further step.

Iran: committed to protecting rights of older persons via MIPAA and existing agreements. OEWGA provides a platform for an exchange of information. We do not support a conclusion document without an explicit mandate by the GA to alter the format of the OEWGA.

Japan: Values greatly OEWGA as way to exchange information. Chair's summary is sufficient. We have concerns: 1) limited dates of the OWEWA; 2) intersessional negotiations seems impossible as UN calendar is full. We are always ready to listen to other member states.

Nigeria: Older persons whose guidance and knowledge are needed. Nigeria supports chair's proposal. Nigeria will support any framework that reflects human rights of older persons eg right to long term care and palliative care. How can we afford not to leave anyone behind if we don't move from rhetoric to action. Nigeria supports a coherent well integrated international instrument.

Mexico: endorses statement made by South Africa and supports the chair's proposal.

Brazil: strongly supports chair's proposal as an instrument to crystallize substantive issues and we should bear in mind what civil society has said. Outcome document is not to define but to consolidate discussions. Within BRICs we have documents that could be used. Supports an international legally binding instrument.

Germany: aligns with EU statement; pleased with increase with inputs that were submitted. Supports the proposed 2020 Focal areas namely, Access to justice and right to work and access to labor market. We will study and consult on your proposal for an outcome document. Germany does not support rush to commitment to a legal instrument. We should have a more structured time limits to give NGOs and others more time and need an interactive manner.

Ecuador: March 2019 we approved specific law to protect older persons with specific funding for vulnerable older people. InterAmerican Convention should be a reference. Firmly support proposal for an outcome document to have clear results of sessions. Supports a binding instrument. Older persons cannot wait.

Morocco:

13. We shared same common position to ensure protection of human rights of older persons. Existing rights apply to all people.
14. NGOs and NHRIs have emphasized need for a legal instrument. Other focused on implementation efforts of existing agreements. We are open
15. Let's not fall into trap not to deepen discussion on possible elements. Existing tools are complementary not exclusive. Eg CEDAW example and Convention one Rights of the Child and CRPD.
16. Progress can be made here, Third Committee or UNOHCR so we are open. Older persons should not be left behind.

US: committed to protecting rights of older people. Stock taking document that would not be binding. Consider looking at existing frameworks. We echo some of concerns for improving methods - eg more interactive discussions; we always value civil society's voice. Highlighting 2 issues per 4 day session. Look forward to getting answers to EU and Japan's questions. Question is this a one time document or an annual event? (Not commit to regular document and not be binding or deal with controversial topics).

UK: look forward to discussions about an outcome document. Align with the EU.

Chile: Older persons cannot wait so we give full support to your proposal and our full support in the process that you are leading.

National Old Folks of Liberia: If you look around the room, see many countries are not represented (including his country). His country, old persons suffer a lot suffering from loneliness. Due to civil war, children have passed away so no one to take care of parents. Leading NGO wants to bring to your attention asks for support - no healthcare, no healthy housing. Please bring in countries so that no one is left behind. Supports the chair.

HelpAge International: welcomes increased number of African nations and congratulates Cameroon and Nigeria's joining in support. Disappointment that those member states who champion human rights in other venues block progress for rights of older persons. We would like to see a discussion on normative elements. Intersessional meeting in Asia and Africa should build on the momentum

EU: thanked all. Involvement of civil society and NHRIs is indispensable for learning. EU has been active participants; having collected data. Would be in favor of continuing what type of inputs should be requested for focus topics. UN agencies could look more systematically at rights of older persons eg treaty bodies within their mandates. UPR could be used to highlight rights of older persons. (Currently less than 1%). Inputs should be further analyzed and a description of items and how human rights could be suggested. Proposed focus topics are both very relevant areas. Work on prior sessions is far from completed and should continue. There is a pressing interest to more effective use of existing agreements.

Chair: Fundamental to have open candid discussions with all stakeholders.

Responding to some questions/doubts: we are seeking intergovernmentally a text to discuss progress, where we can't and where we can make progress. We have discussed modalities in the Bureau and regionally. Civil society, NGOs, NHRIs all want a summary document pointing in the direction to follow. Urge those not in favor to look at transparent solutions. Noted all these conventions; why not also for older persons? He has taken note on comments, concerns and will work with states during the intersessional period.

Two topics for OEWGA 2020:

Access to justice and right to work and access to the labor market.

No requests for the floor so it was agreed.

Item 8: Provisional agenda for the 11th OEWGA. No comments.

Item 9: Chair's summary will be circulated with the report A/AC/278/2019/L1.

Rapporteur introduced the draft report. Will be updated and completed as required.

Adopted with no comment. So decided.

Chair made closing remarks.

17. Thanked all members of the OEWGA, observers, intergovernmental agencies, civil society, NHRIs; panelists; DESA, OHCHR; Secretary of the Working Group; support team; Bureau, interpreters, etc.

Adjourned at 5:10 pm

*** Notes courtesy of Kathy kline

