

## 20<sup>th</sup> Informal ASEM Seminar of Human Rights - “Human Rights of Older Persons” 22-24 February 2021

### Key Messages

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The human rights of older persons have gained increasing attention over the last few decades in the context of global population ageing and have been cast into high relief by the COVID-19 pandemic. The pandemic's impact on older persons has highlighted and exacerbated existing patterns of ageism and discriminatory social structures and raised fundamental questions about the adequacy of existing rights regimes to ensure that everyone fully enjoys their human rights and fundamental freedoms without discrimination on the basis of older age.

The 20<sup>th</sup> Informal ASEM Seminar on Human Rights on the topic ‘*Human Rights of Older Persons*’ thus took place at a critical juncture. The Seminar was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Swiss Federal Department of Foreign Affairs and the Ministry of Foreign Affairs of the People's Republic of China. The Seminar brought together over 130 official government representatives and civil society experts, representing 44 ASEM members to discuss the protection of human rights of older persons were protected and what concrete measures States and other stakeholders could take to improve the realisation of the human rights of older persons at international, regional and national levels.

The Seminar convened four working groups which discussed a number of cross-cutting questions as well as specific themes. The themes were **Autonomy and Independence of Older Persons**, **Social Protection and Human Rights of Older Persons**, **Age Discrimination against Older Persons Focusing on Labour Markets**, and **Empowerment of Older person through Education and Training**. While a detailed summary of the working group discussions and recommendations is to appear in the final Seminar Report, highlights of the key findings and recommendations are set out here.

#### *The nature of ageing, human rights in older age and the diversity of older persons*

The ageing of global populations has meant that more people are living longer than ever before and that the number and percentages of older persons in national populations have grown and will continue to grow in the coming decades. **Global population ageing is often presented primarily as a problem.** Such assessments often draw on concepts such as ‘dependency ratios’ that neglect economic and social value of the work and other contributions of older persons or fail to recognise that patterns of behaviour as people and societies age may change.

‘Older persons’ and ‘Older age’ are socially constructed concepts the meaning of which varies between and within societies. While chronological age is often used to determine the threshold of older age, ageing cannot be simply reduced to this: it has chronological, biological, psychological and social dimensions. **Given the diversity of people's experience of ageing, chronological age is an imperfect proxy for identifying whether particular persons have specified characteristics and may be based on ageist stereotypes.** Older persons are extremely diverse in their experiences and characteristics and this needs to be taken into account in developing policy in relation to ‘ageing’ – race, sex, gender, disability, indigeneity, socio-economic status, rural/urban location, and migration status, are just some factors that influence how a person experiences ageing and the intersectional

nature of discrimination they encounter. A person's experience of ageing also reflects (dis)advantage at earlier stages of their life, so it is necessary when thinking about ageing issues to adopt a **life course approach**.

**Intergenerational (in)equity** has been part of the debate around the implications of population ageing; it is often asserted that the current and likely future allocation of resources to services for the older population takes away from resources that should be more fairly allocated to younger groups in society. We need to foster **intergenerational relationships - in families, workplaces and many other social situations. Intergenerational relationships already perform important human, social and economic functions and have been shown to help to eliminate ageism and prejudice against both younger and older persons on the basis of age and to enhance the enjoyment of human rights by all.**

### ***Ageism is a serious and widespread problem***

**Ageism is the treatment of a person or group of persons based on their actual or assumed age (generally chronological or relative age) and/or stereotyped characteristics attributed to persons of that age.** It is directed against both older and younger people and may involve both adverse treatment or apparently benevolent treatment (which may nonetheless have adverse effects). **Ageism is discriminatory** because it is based on stereotypes that all persons of a particular age share similar qualities and thus involves the treatment of individuals without regard to their actual abilities and characteristics. A human rights violation in itself, it leads to violations of other human rights.

**Ageism** against older persons generally involves stereotypes that assume all older persons experience significant physical and mental decline, lack capacity to adapt to changing circumstances or to learn new skills, and do not contribute in economic and social terms. Such attitudes are often accompanied by a devaluation of older persons as human beings and the discounting of the value of their lives. **Ageism has a significant impact on older persons' physical and mental health**, as many people internalise the stereotypes and devaluation that is reflected in ageist attitudes, practices and institutions in society. It has significant economic and social costs in addition to its human impact.

### ***The extent and adequacy of legal protection of the human rights of older persons***

**The international human rights system provides little explicit protection of the human rights of older persons or against discrimination on the ground of older age.** Older persons, like other persons, enjoy the rights guaranteed under international and regional human rights treaties. However, the absence of an explicit recognition of ageism and age discrimination and of rights based on an understanding of the nature and significance of the ageing process have meant that **in practice the types of violations suffered by older persons are not particularly visible in the international human rights system.**

**At the regional level in Europe and Asia there are different levels of protection; in each case they are inadequate.** The Council of Europe and the European Union provide some international and supranational protections against discrimination on the ground of older age and guarantees of the right to social protection. However, these have limited scope and have had a limited practical impact. In Asia there is even less explicit recognition in regional or subregional human rights instruments of the need to provide such protection; and there is no binding regional/ subregional human rights treaty of general application or relating explicitly to older persons that addresses the issue effectively.

**Older persons are often unaware of their rights and the procedures available to them to vindicate those rights (where such rights and procedures exist).** Older persons often face delays, significant financial, accessibility and other barriers to their obtaining timely and effective remedies for violations. **Individual complaints-based systems are often not the most effective means of challenging systemic discrimination or bringing about policy change** and there is a need to develop better procedures.

A new United Nations treaty on the human rights of older persons would provide a useful framework for policy development, a rallying point for solidarity and advocacy, could lead to increased capacity and rights literacy among older persons and would provide a useful procedure for regular external international review that could stimulate change. However, progress might also be achieved by better use of existing standards and national and international procedures.

### *Autonomy and Independence of Older Persons*

Autonomy and independence have a fundamental importance for everyone, including older persons. They are free-standing rights as well as cross-cutting ones that influence and enable the enjoyment of other rights. Older persons enjoy a universal right to the protection of their autonomy and independence. The realization of this right may vary in different national and local contexts, though should always be directed to giving effect to the will, preferences and decisions of older persons.

Autonomy is the ability to exercise freedom of choice and control over decisions affecting one's life. It is the right to exercise control over one's life, to make one's own decisions and to have those decisions respected. Independence encompasses the right to live in the community without assistance or with any care and support required to allow a person to exercise their independence, without having others make decisions for them. It also includes the ability of a person to perform functions of daily living, to be able to carry out one's decisions in practice and to be able to remain fully integrated in society.

Older persons value autonomy and independence highly but are often not able to make their own decisions about their everyday life and choices in terms of financial and other decisions. This is frequently the result of ageism and discrimination, traditions and customs and negative attitudes in society and family.

There is a risk of increased social isolation for older persons due to changes in society, including rapid digitalisation and increasing generation gaps (geographically as well as social). Many older persons face barriers to participate fully in the community and to make contributions to society.

Older persons and their representative organisations have the right to be consulted about and participate in policy-making of all kinds. Often policies are adopted without such consultation or participation and without specific regard to the potential impact on older persons.

### *Social Protection and Human Rights of Older Persons*

Many societies have undergone fundamental changes in family structures that mean that assumptions that families would be the principal source of care and support for older persons no longer hold (even assuming older family members always preferred such arrangements). State support in the form of social pensions, or other support to supplement private resources is critical.

Significant differences exist between Europe and much of Asia (especially in lower and middle-income countries in relation to social protection in older age. In Asia, a much smaller percentage of the population has access to employment-related or contributory pension systems, and a much higher percentage of people (especially women) work in the informal economy. Thus, the extension of social pensions to a greater percentage of the population as well as moving to ensure they are adequate to support a decent standard of living is a priority.

### *Age Discrimination against Older Persons Focusing on the Labour Markets*

Older persons often experience ageism in the labour market, which leads to their exclusion from opportunities to enter, re-enter or remain in the labour force and consequently their ability to enjoy an adequate standard of living. Such discrimination often starts in mid-life rather than at the later stages of life that governments and employers often define as 'older age' by reference to chronological age thresholds (such as 60+ or 65+), 'standard retirement age' or pension eligibility. Older women face particular forms of discrimination, and discrimination at earlier stages in their life has a significant impact on any benefits that they receive under contributory pension arrangements.

**Mandatory retirement ages raise complex issues of discrimination.** Prima facie they are discriminatory as they are based on chronological age. Some justifications offered for them appear to reflect ageist assumptions or economic or social assumptions that are not evidence-based and may no longer be appropriate as labour markets change. Mandatory retirement can push older persons into poverty.

**Ageism in the labour market context often takes the form of younger people and employers considering that older persons are unproductive, or unwilling or unable to learn new skills.** However, studies have shown that this is not so and that **intergenerational workforces are often beneficial** for enterprises that foster them, as many older employees bring experience and different skills to their workplaces.

### ***Empowerment of Older Persons through Education and Training***

**Older persons have articulated a variety of needs relating to life-long learning, education (including technical and vocational training) and capacity building.** These include, but are not limited to, the acquisition or updating of skills and knowledge that will ensure their ability to (re)enter or remain in work. Older persons also want access to learning opportunities that will allow them to acquire skills and knowledge that goes beyond a focus on work and that relates to their stage in life, their many other public, private and family roles and their self-fulfilment. These include the acquisition of (enhanced) digital skills, information about their own health, nutrition and exercise and how most effectively to access health and other public and community services, how to earn a living, learning (more) about politics and human rights and running organisations, grandparenting skills, creative and recreational skills and literacy and language skills.

**Currently laws and policies relating to adult education at the national level do not generally respond to the full range of the rights and needs of older persons** and tend to focus on education directed to enhancing people's capacity to engage in remunerated work, with many of these programs not intended or well-designed for older persons (and sometimes such programs exclude persons over a particular age). **Other barriers** include: limited interest shown by policy makers in the life-long learning needs of older persons; inadequate resources available for many of these programs; the fragmented distribution of responsibility among separate ministries; failure to take into account the diverse needs of different groups of older persons; gender differences in experiences, needs and accessibility; rural/urban divide; a lack of age-friendly trainers, and little media interest in these issues.

### **General recommendations**

#### **ASEM Member States should:**

1. adopt appropriate legal, administrative, educational and other measures to address the existence and effects of ageism in their societies, taking into account the intersection of age with other characteristics such as sex, race, gender, disability and other statuses.
2. review their position on the desirability of a new United Nations convention on human rights in older age, consulting closely with national human rights institutions, and organisations of older persons, experts and other interested parties at the national level;
3. explore ways of making better use of existing international, regional and national norms and frameworks to improve the enjoyment by older persons on their human rights;
4. consider ways to strengthen existing regional or subregional human rights frameworks, institutions and procedures, including through the adoption or strengthening of legally binding instruments and complaint procedures to ensure the provision of adequate remedies to older persons;
5. ensure that older persons and their representative organisations are consulted about and participate in policy-making of all kinds, in particular that relating to ageing or the rights of older persons and ensure that these is informed by evidence-based knowledge; this should include the economic and social recovery strategies for exiting from or living with COVID-19, and more generally the preparation for and execution of disaster response and recovery strategies;

6. take steps to ensure that the rights to autonomy and independence are understood as necessary requirements for the implementation of other rights and guaranteed by law.
7. review their existing legislation to ensure that there is explicit constitutional and/or legislative protection against discrimination on the basis of older age (including in conjunction with discrimination on the grounds of sex, race, gender identity, migration status or other relevant characteristics), including discrimination by both public and private actors (including businesses)
8. review their policies on mandatory retirement ages to consider whether these policies are discriminatory and whether the rationales put forward to justify them are consistent with the right to equality and non-discrimination on the basis of older age;
9. encourage research into and promotion of the benefits of intergenerational workforces;
10. ensure that legislation in all areas is consistent with fundamental standards of human rights and their treaty obligations as those apply to older persons; this includes labour and employment legislation, criminal and other laws relating to elder abuse, social security, social insurance and pension laws, laws relating to the exercise of legal capacity (e.g. guardianship laws), health legislation, housing laws legislation regulating long-term care and other laws;
11. review the mandates of their national human rights institutions or other similar bodies to ensure that those mandates cover the rights of older persons (and subgroups of older persons) and provide protections against discrimination in older age and ensure that the work of those institutions in those areas is adequately funded;
12. review their national systems for the provision of care and support to older persons, both those living in their own homes and those living in care homes, including assessing whether these arrangements are consistent with existing human rights treaty obligations;
13. take all necessary measures to ensure that their systems of social protection (including unemployment benefits, sickness benefits, social security benefits and pension benefits) are extended to all older persons, including those working in the informal economy sector and those performing unpaid care work, so that they have access to the resources needed for them to enjoy the right to an adequate standard of living and decent conditions of life;
14. take all necessary measures to ensure that women's patterns of participation in the paid labour force, their representation in the informal economy and their performance of unpaid care work in the community and the family, do not lead to the continued exclusion from or disadvantage in access to forms of social security including pensions;
15. ensure that measures to give effect to the right to lifelong learning, education and capacity building by older persons are designed in close consultation with older persons and are consistent with the human rights to equality and non-discrimination, with programs available, acceptable, adapted and accessible to older persons and taking account of the diverse needs of older persons;
16. review existing adult education policy and programs, including technical and vocational training and other lifelong learning initiatives to ensure that these are not focused only on preparation for the paid labour force but also respond to other needs of older persons;; and also to ensure that lifelong learning initiatives include access to opportunities for older persons to improve their digital literacy and to learn other skills relating to their life transition as well as for the continuing enrichment of their lives; and
17. work collaboratively with international and national bodies to improve the quality and coverage of statistics and data relating to older persons to ensure that high-quality disaggregated data is available for all aspects of policymaking in relation to older persons.

While these recommendations are directed to ASEM Member States, the Seminar discussions also underlined that there are important roles to be played by others, including national human rights institutions, civil society organisations, business and the private sector, and research institutions and universities in ensuring the realisation of the human rights.