



30th November 2017

Feedback on Draft of General Comment on Article 5 Equality & Non-Discrimination Submission by AGE Platform Europe

AGE Platform Europe (AGE), as the largest EU network of organisations of older persons, welcomes the draft General Comment (GC) on Article 5 of the UN Convention on the Rights of Persons with Disabilities (CRPD). AGE brings forward the views of the more than 40 million older persons who are directly represented through the organisations involved in our network. The objective of this written submission is to raise awareness of the intersection of ageing and disability and to address the age discrimination faced by *older persons with disabilities*, i.e. adults who are faced with impairments and functional limitations for the first time when they reach old age and by *ageing persons with disabilities*, i.e. people who age with a pre-existing disability.¹

Introduction

In [our previous contribution](#) for the elaboration of this General Comment (GC) we have established through various concrete examples the disadvantageous treatment of older persons with disabilities, who often fall between the cracks of ageing and disability policies. While we warmly welcome a couple of references to older people and age in the draft general comment (in particular in paragraphs 4 and 44), we regret that the text does not give adequate guidance for duty bearers and rights holders regarding the intersection of ageing and disability.

The CRPD has enshrined protection for two forms of intersectional discrimination affecting women and children with disabilities. Although the link between older persons and persons with disabilities has been underlined by the UN CRPD Committee², the OHCHR³, the Independent Expert on the Enjoyment of all Human Rights by Older Persons⁴, and the UN Secretary General⁵ among others, no substantive provision acknowledges the situation of older people with disabilities as a type of intersectional discrimination.

In our view this normative gap should not be a reason why the draft General Comment does not explain in more details how equality and non-discrimination apply at the intersection of ageing and disability. Under international law age discrimination can be justified based on reasonable and objective criteria⁶. However, there is lack of clarity as to what a justified limitation to age equality is

¹ The CoE makes a distinction between older and ageing persons with disabilities, see Angela Garabagiu (2009) *Council of Europe actions to promote the rights and full inclusion of ageing people with disabilities*, Int J Integr Care. 2009 Apr-Jun; 9(Suppl): e24.

² United Nations Committee on the Rights of Persons with Disabilities (2013) Position statement concerning the CDDH-AGE

³ Report of the United Nations High Commissioner for Human Rights (2012) E/2012/51, 20 April 2012. See also OHCHR (2012) Normative standards in international human rights law in relation to older persons – Analytical Outcome Paper

⁴ Independent Expert on the enjoyment of all human rights by older persons (2015) *Autonomy and care of Older Persons*, A/HRC/30/43

⁵ UN Secretary General (2011) *Follow-up to the Second World Assembly on Ageing*, A/66/173, 22 July 2011, §47

⁶ See Committee on Economic, Social and Cultural Rights, general comment No. 20, “Non-discrimination in economic, social and cultural rights” (E/C.12/GC/20, para. 29), Committee on Economic, Social and Cultural Rights, general comment No. 6 “Rights of older persons” and also Human Rights Committee, *Love et al. v. Australia*, Communication No. 983/2001, *Schmitzde-Jong v. The Netherlands*, Communication No. 855/1999, *Solis v. Peru*, Communication No. 1016/2001 and *Althammer et al. v. Austria*, Communication No. 998/2001



and whether general exclusions based on age are legitimate. The CRPD is responsible to explain whether situations, such as age limits and other age-related barriers, which are routinely applied by States parties in legal entitlements to disability benefits and services are legitimate distinctions under the Convention. As long as the CRPD Committee does not address this differential treatment, States parties will continue to apply discriminatory policies and laws that work against older persons with disabilities.

In light of the recent Expert Group meeting on supporting autonomy and independence of older persons with disabilities, which took place in New York on 25 and 26 October 2017, we urge the Committee to better reflect the risk of age-based biases in the implementation of disability measures, by taking into account the following recommendations.

Recommendations

Under **paragraph 8** we suggest including “ageism” in the following sentence, which describe some of the prejudices that serve as a basis for the exclusion of persons with disabilities.

*Despite progress in disability law and policy, persons with disabilities continue to be systematically excluded from many areas of life, often based on notions of dominance, power and devaluation such as racism, sexism, **ageism** and ableism.*

Under **paragraph 38** add “older persons” with regard to DPOs who represent various societal groups

*States parties must ensure that they closely consult and actively involve DPOs who represent the vast diversity in society, including children, the LGBTI community, **older persons** and indigenous and rural communities.*

Reflect on the situation of older persons with disabilities under **section v on article 11 pertaining to situations of risk and humanitarian emergencies**. According to Handicap International and Helpage International older persons with disabilities are at the highest risk of exclusion during humanitarian emergencies. They are often invisible in interventions, their needs are rarely met and they face particular threats to their safety, security and ability to survive⁷.

Paragraph 66 which refers to article 19 of the convention can lead to further exclusion of older persons with disabilities by stating that “*Setting up specific services for particular groups of persons with disabilities in accordance with their requirements, such as services for children, students, or employees with disabilities, is not considered as a discriminatory violation of the Convention but rather as fulfillment of the rights under article 19*”. Whereas we acknowledge the need for specific services targeting sub groups of persons with disabilities, the unconditional formulation of this paragraph can be used as an excuse for services that segregate older persons with disabilities, or for the unavailability of certain choices to people with disabilities of older age. As explained extensively in [our previous contribution](#) older people tend to be excluded from services such as rehabilitation and to lack an entitlement to disability allowance and personal assistance, which is available to other age groups.

Recent research by the ILO has concluded that wide gaps of social protection coverage in long-term care and infrastructure and unequal treatment of older persons in need of support compared to younger persons with similar needs, such as health care, constitute a form of age-based

⁷ <http://www.helpage.org/newsroom/latest-news/less-than-1-of-humanitarian-financing-targets-older-people-and-people-with-disabilities/> and <http://www.helpage.org/what-we-do/emergencies/older-people-in-emergencies/>

discrimination⁸. The Special Rapporteur on the human rights of persons with disabilities has highlighted some of the structural inequalities faced by older people that lead into poverty traps⁹. She has moreover called for a lifecycle approach in disability assessments. On the other hand, the OHCHR thematic study on non-discrimination has only paid attention to ensuring coverage of disability-related costs when transitioning to retirement¹⁰, and did not reflect the problems faced by those people with disabilities who are already in retirement when disability occurs. The GC should adequately address the barriers faced both by ageing and older persons with disabilities, by explicitly stating that age limits in disability schemes constitute a form of age discrimination, which impede older persons with disabilities from living independently in the community on an equal basis with others.

Paragraph 75 in addition to referring to data disaggregation by age, should also reflect that data sets should not have age limits, but also that disaggregation should avoid large age groups. National databases often stop around the age of 70 or even earlier, and/or include very broad age brackets such as 65+.

Point m, under section VII Implementation at national level, should refrain from referring to the elderly and use the term “older persons” instead. It is important to emphasise that the term “elderly” is not synonymous with “older persons.” The term elderly not only assumes an age-based identity for millions of individuals whose capacities are very different, but it also has a negative connotation as it brings to mind fragility and need for protection rather than the right to active participation. The term older persons, which is used also by the UN Open-Ended Working Group on Ageing and the UN Independent Expert on the Enjoyment of all Human Rights by Older Persons, should be the standard term at the UN.

Conclusions

To conclude we reiterate the following recommendations to the CRPD Committee:

- Recognise the systemic, multifaceted, structural discrimination faced by older people with disabilities;
- Construct disability in a manner that does not justify the exclusion of older people;
- Encourage Member States to systematically report on the barriers faced by ageing and older people with disabilities;
- Raise awareness of the relevance of the CRPD for older persons with disabilities;
- Systematically include older people’s organisations in consultations and monitoring mechanisms ;
- Request the collection of data for all age groups, without age limits and with additional age bands to better reflect the situation of very old persons with disabilities: Without such data it is difficult to evaluate the impact on older people, to eliminate unlawful age discrimination and promote age equality;
- Provide legal clarity and policy guidance for duty bearers, human rights practitioners and self-advocates on the specific human rights challenges in the intersection of old age and disability, including through a future General Comment on the rights of older persons with disabilities.

⁸ Scheil-Adlung, X: LTC protection for older persons: A review of coverage deficits in 46 countries. International Labour Organisation, Geneva 2015 cited in ENNHRI submission to UN OEWG: <https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NHRI/EuropeanNetworkofNationalHumanRightsInstitutions-1.pdf>

⁹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/297

¹⁰ See paragraph 70 of A/HRC/34/26 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/406/73/PDF/G1640673.pdf?OpenElement>

About AGE

AGE Platform Europe (AGE), is the EU largest network of organisations of and for older persons. Funded by the European Commission DG Justice, we aim at voicing and promoting the rights and interests of the 190 million inhabitants aged 50+ in the European Union. Through our membership we represent directly more than 40 million older persons across the EU. AGE is a holder of ECOSOC status and also has a consultative status with the Council of Europe.

AGE's positions are developed in close consultation with its member organisations, which are mainly older people (self-advocacy groups) and some services providers providing support to older persons. AGE governing bodies and task forces are open to all older persons nominated by AGE member organisations and our activities are organised to include older persons with disabilities. AGE submission is informed by the input of AGE task forces on Human Rights and Dignified Ageing, and former position papers adopted by AGE Council.

Resources

- [AGE Position on Structural Ageism](#)
- [AGE contribution to the draft outline of the GC on article 5](#)
- [AGE response to UN Special Rapporteur on Disability call for submissions on the right of persons with disabilities to social protection](#)
- [AGE submission on draft General Comment on article 19](#)
- [AGE submission to consultation on article 19](#)
- [Older persons' self-advocacy handbook](#)

More information

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