



AGEING, A CONSIDERABLE ACHIEVEMENT FOR HUMANITY: THE ILC PERSPECTIVE

Fighting Age Discrimination

UK

Wider demographic trends and changes in forms of organisation of family life set the stage for an alteration in the inter-generational balance. With respect to the EU, this changing social landscape is chiefly characterised by later marriages, fewer marriages, higher rates of divorce, fewer children per household and single-parent families. As ILC UK observes, the arrangements which have long delivered social cohesion, today stand on less firm ground than ever. Policy makers must monitor and evaluate, cautions ILC UK, when the challenge to the legitimacy of the inter-generational contract becomes so severe as to warrant a response.

One key imbalance we must inevitably address is the very unequal conditions of life in which people expect to find themselves in their old age. A key indicator of this situation is in fact, how old they expect to live. Statistics for the UK, for instance, reveal a staggering ten-year gap in the life expectancy of a middle-class man in the south east and a manual worker in Scotland. A group of UCL researchers has recently come out in support of the relative income hypothesis which states that that for regions with GNP per capita beyond US\$ 8000–10 000, health status is mainly affected by the spread of income. Two major pathways of causation have been proposed for the effect income inequality exerts on health status: the material deprivation pathway and the psychosocial pathway.

The British Institute for Human Rights, in lamenting the fact that older people are little aware of those rights that apply to them is making two important points:

- Social service recipients, alongside providers, have a role to play in the embedding of norms and practices of service-delivery in a human rights framework
- Human rights are equally relevant to and find wide-ranging applicability to life-situations obtained in stable democracies with advanced economies

Appearing at the mid-point of the duration of the National services Framework for Older People scheme, the *Living Well in Later Life* report of the Health Care Commission identifies tackling discrimination as key to the programme's success. This would involve not only the reversal of objectionable ageist attitudes but also greater awareness of a whole range of diversity issues, recognises the commission.

From a legal standpoint the case for a separate UN or European Convention on the Rights of Older Persons, some experts suggest, is strengthened by the fact that it would transform the image of older



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people from passive and in need, to entitled and participatory. Furthermore, any international convention ought to take into account not only responsibilities of governments but also continued responsibilities of public oversight where services have been privatised. This argument extends to banking, insurance and other financial services as well as design of buildings and accessibility to means of transport and communication.

Article 23 of the Revised European Social Charter represents the first binding human rights treaty provision to specifically protect the general rights of older people. Most of the provisions in international law are either non-binding, such as the UN Principles for Older Persons, 1991 and the Madrid International Plan of Action on Ageing, 2002 or merely focus on one aspect such as Article 25 of the Universal Declaration of Human Rights. It overlaps with other provisions of the Charter which protect older persons as members of the general population such as Right to social security, medical assistance and benefit from social welfare services.

The British Institute of Human Rights explicitly projects the Human Rights Act of 1998 as giving people recourse against discrimination and maltreatment and in the process, inducing more conscientious and humane service delivery on the part of public bodies. A recent publication from Age Concern recognises the extension of human rights protection to people in care homes as signalling acknowledgement of this approach on the part of government departments. It also draws attention to the stated executive intent to introduce legislation to outlaw age discrimination in goods, facilities and services as part of its planned Equality Bill. It lauds the establishment of a new health and social care regulator, the Care Quality Commission, as an opportunity to evolve an exemplary approach to the use of human rights in regulation. This report carries the not unimportant message that professional regulators have a key role to play in promoting human rights in professional standards and in the requirements for undergraduate training and continuing development.

Rt Hon Rosie Winterton, Minister for Pensions and the Ageing Society in February this year, in response to John Elbourne's review of older people's engagement with Government, said that a new national UK Advisory Forum on Ageing will give older people a direct line to Government to comment on new policy ideas, services, legislation and what areas they feel the Government needs to address. The Forum will have a clear focus on helping to improve the wellbeing of older people and addressing the opportunities and challenges of an ageing society.

South Africa

Over 35 million people above age 60 are estimated to be living in sub-Saharan Africa today. Even as extended family systems are undergoing metamorphosis, poverty among the elderly remains a



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problem. At the same time, this ageing population is being cast in the role of primary care giver in the face of the HIV/AIDS epidemic – both to adult offspring and orphaned grand-children. Lacking basic non-contributory pensions and free health care in many regions, they are often not well-positioned to fulfil these new responsibilities at a time when they are themselves entitled to a measure of care and security.

In South Africa, social traditions in favour of respect for age have not, unfortunately, stood in the way of age discrimination in its various forms and manifestations. Older people are abused socially, physically, sexually, economically and psychologically. Their basic human rights, such as the right to life and liberty, the right to work and the right to freedom from discrimination are violated. Older people are abused by family and community members and are accused of everything from witchcraft to preventing, or causing, too much rain – for which they are tortured and assaulted. Economically they suffer as their assets are stolen and financial institutions refuse credit and other services. Age based discrimination is pervasive and prevents older people from accessing basic rights such as adequate health care and legal protection. Research has also shown that with the exception of Indian households, older person-headed households had higher food poverty rates than young households.

Poverty: Key Findings of a HelpAge International Study:

South Africa has one of the most rapidly ageing populations in Africa, with a particular increase in the 64-73 year age category, from 25.8% of the total population of older people in 1996 to 26.5% in 1999. According to the data, one quarter of all older people can be expected to be chronically poor, in terms of the poverty line that has been used i.e. living in households earning less than half of R800 per month. It was found that Africans make up almost 90% of chronically poor older people.

Also, for all age groups there are more female than male older people. The socio-economic implication of this feature is that 42% of all African households are female-headed, more so by the grandmother than the mother of the family.

The distribution of chronic poverty largely follows that of the national poverty profile with the Limpopo province, Eastern Cape and Free State and Northwest being the poorest areas, while the Western Cape and Gauteng are least poor. In so far as the geographic movements of the chronic elderly poor are concerned, studies have shown that older people continue to migrate, largely due to the availability and quality of health services, physical infrastructure and pension systems.

At the end of 2003 more than 5 million South African adults were living with HIV and 370,000 people died of AIDS that year alone. The task of caring for the nation's 1.1 million AIDS orphans



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has fallen largely to older people. More than 60 per cent of these orphans live with their grandparents. Households often face rising expenses and falling income. Medical, transport and food costs are all likely to increase, and older people caring for orphaned children face school fees.

South Africa has a wide package of means-tested social protection measures that can ease this burden. They include:

Old age pension

– up to R780 (US\$116) a month

Child support grant

– R180 (US\$27) a month

Foster care grant

– R530 (US\$79) a month

Disability grant

– R780 (US\$115) a month

School fee exemptions

– about R150 (US\$22) a year for primary and R300 (US\$44) for secondary

Free antiretroviral therapy (ART) at government hospitals.

The number of people receiving these benefits has risen dramatically since apartheid ended in the mid-1990s. But almost one in five of those eligible for a social pension fail to get it, as do three in 10 of those eligible for child support.

At the level of the African Union there has been a growing awareness about the need to address these issues as a matter of priority. Concrete measures in this direction include close co-operation with HelpAge International and the adoption of a new policy framework in 2003. Stemming from the adoption of a Rights perspective, the broad approach of this framework reveals an emphasis on enactment of legislation at the country level in the interest of the elderly. Recommendations have also been made on the implementation and monitoring aspect, key among them, the provision of free legal aid to older people.

Despite its ambitions to be reflective of the uniquely African scenario, the African Charter on Human and People's Rights lacks the specificity to respond to challenges concerning older persons. Similarly, policy and legislation relevant to the rights of older people does not incorporate all the obligations flowing from it. Jody Kollapan (*The Rights of Older People: African Perspectives*) makes the important point that effective redress mechanisms are unfortunately not yet in place to address situations of rights violations. Moreover – and this observation appears generalizable across large



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parts of the developing world – there is widespread lack of awareness about rights of older people or indeed, the notion that they too are rights bearers.

Although the African Charter does not have any specific provision dealing with the right to social security, the rights enshrined in Articles 5, 6 and 16 which speak to human dignity, security of the person and one's right to enjoy the best attainable state of physical and mental health respectively, may be collectively interpreted as encompassing the desired goal of social security. Article 29 (1) of the African Charter provides that every individual has the duty to support his/her parents in case of need. The social structure to enable this is still prevalent in much of Africa but departures from traditional ways of life and the HIV/AIDS pandemic have certainly undermined its potential.

The Specific Context of the Female Elderly:

The Protocol on the Rights of Women in Africa provides that elderly women shall be guaranteed freedom from violence and treated with dignity. Domestic violence acts have been adopted in some countries, extending protection to elderly persons in relation to their children. Special provisions to address violence against older persons have also been incorporated in the South African Older Persons Act and the Mauritian Protection of Elderly Persons Act.

The Right to Inheritance of Property remains of critical importance to women who outlive their partners. In South Africa, the Constitutional Court has, in its rulings, declared the rule of male primogeniture as it appears in customary law as inconsistent with the Constitution and invalid to the extent that it excludes or hinders women from inheriting property. It should be noted, however, that notwithstanding progressive judgements, broader policy development moulding social reality is a formidable challenge as power relations, social structures and the weight of custom often pose as obstacles.

India

Despite its being frequently described as a “young” country the estimated size of the elderly population in India is 81 million. United Nations has indicated that India will have 198 million persons 60+ in 2030 and 326 million (21 % of the total Indian population) in 2050.

Incidence of widowhood is higher among females 60+ than among the males of the same age group. It is customary for women to get married to men older by several years. Women tend not to remarry and live longer. Some of the visualized implications of demographic transition are:

- In the coming decades, a growing number of persons 60+ will belong to the middle and upper middle income groups
- Will be economically better off with some degree of financial security



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- Will have higher professional and educational qualifications
- Population 60-69 years can be expected to be in reasonably good physical and mental health, free of serious disability and capable of leading an active life
- Population 70-79 can also be expected to be fit for a reasonably active life
- Incidence of widowhood will be higher among females

This is indicative of the huge reserve of human resource.

Changes in society and economy and changing values and lifestyles are affecting their living conditions in the following ways:

- Much higher costs of bringing up and educating children, and; pressure for gratification of their desires affect transfer of share of income for the care of parents.
- Due to shortage of space in dwellings in urban areas and high rents, migrants prefer to leave their parents in their native place
- Changing roles and expectations of women, their concepts of privacy and space, desire not to be encumbered by caring responsibilities of old for a long periods career ambitions and employment outside home implies considerably reduced time for care giving
- Increasing number of people accepting a small family norm implies availability of fewer care givers especially since in a growing number of families, daughters, too are fully occupied, pursuing their educational or work career.

The National Policy on Older Persons was announced by the Indian government in 1998. Subsequently, the last year of the 20th century was dedicated by the Indian government to the elderly – 1999 was declared National Year of Older Persons, with a view to focus on their needs.

This year's Central budget announced the following special provisions:

- For senior women citizens, the income tax limit increases from Rs. 195 thousand to Rs. 225 thousand.
- Three schemes to be introduced for providing social security to unorganized sector workers.
- A national programme for the elderly to be started at a cost of Rs. 400 crore.
- Rashtra Swasthya Beema Yojana to start from April – one in Delhi and Haryana. Rs 30,000 for each family belonging to unorganized sector.

Other relevant economy-wide trends are:

- In recent years, banks have begun to give higher rates of interest to savings of older people.
- Tax breaks for Senior Citizens have grown.



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- Special investment instruments, with higher yields, have been created for older investors.

The Maintenance & Welfare of Parents and Senior Citizens Act 2007 provides for the following:

- Under the Act, Maintenance Application can be filed by parents and senior citizens (above 60 years) unable to maintain himself/herself, against children (not minor) or relatives (who would inherit and are in possession of the property of the elderly).
- The Maintenance application can be filed by the senior citizen or parent or by any other person or organization authorized by him, if incapable of doing so himself.
- The Maintenance Application can be filed either in the District where the elderly resides, or where the children or relatives resides. Notices would be sent and the proceedings should conclude within 90 days from the date of service of the Maintenance Application on the children or relatives.
- The case would be referred for conciliation, if appropriate, before hearing. The findings of the conciliation officer (who can be the Maintenance Officer, NGO representative or anyone on behalf of the elderly) should be submitted to the Tribunal within a month. If an amicable settlement has been reached, Tribunal shall pass an order according to such settlement.
- If, children or relatives are ordered by the Tribunal to pay Maintenance to the elderly, fail to comply, they are liable to a fine or imprisonment.
- Abandonment of the elderly is now a cognizable offence. Anyone responsible for looking after or protecting the senior citizen, leaves him/her in any place with the intention of wholly abandoning, shall be punished and fined.
- Role of NGOs has also been legislated under the Act e.g. for filing maintenance applications on behalf of the elderly if he/she is unable to do so himself/herself, for reconciliation and representation of his/her case if unable to do so and authorizes someone else to represent and facilitate.

Urban-Indian scenario

The elderly living in India's expanding metropolis face a unique cluster of challenges. Withering away of the traditional safety net, on account of progressive erosion of the joint-family system is the first



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of these. This leaves them vulnerable not only to economic disadvantage in the form of old-age poverty but also psychological ill-being resulting from isolation and loneliness.

The traffic situation, coupled with limited access to public transport, leaves their mobility severely constrained. In certain neighbourhoods, security of their lives and properties is a major concern hindering emotional health.

Argentina

Latin America is one of the fastest ageing regions in the world. By 2050, 30% of the population will be aged 60 or over – and the majority will be older women.

Many people in Latin America are growing old in poverty, as a result of lifelong deprivation, a lack of health care, limited employment opportunities and poor pension provision. These problems are exacerbated by high unemployment, national debt and some of the world's highest levels of social inequality.

According to the Economic Commission for Latin America and the Caribbean (CEPAL), Argentina's dependency ratio is currently 57.7 per 100 but is forecast to reach 58.7 per 100 by 2050. Although this increase seems nominal, it will become harder to maintain living standards for the dependent population as the relatively shrinking workforce is put under strain.

While the ageing process in Argentina is comparatively advanced when compared to other developing countries, ageing presently proceeds at a slower pace when compared to past trends. Slow ageing is also projected into the future. The elderly, themselves, have been ageing, and tend to live to a greater extent in urban areas. Elderly women when compared to men are more likely to live alone and in urban settings. Despite a stagnating economy, social gains and improvements in living conditions for the elderly have been largely sustained. The working-age population grew more slowly, however, over recent decades than the total population. The number of retirement system beneficiaries also grew over the period, with retirement benefits reported as the leading sources of income among the elderly. The health care system remains strained by the country's present economic situation, with care failing to reach all of the elderly. Wide societal agreement exists that the family should be a major care provider. With more than 1/2 of all persons aged 65 and over living in extended or mixed households, the family plans an important care and support function.

The fact that public policies toward fertility and longevity are in general ineffective in the short term, the social security pension system needs to be adapted to this new demographic scenario. Moreover, this is not the only problem that social security faces in Argentina. There are other important restrictions originated in the nature and current situation of labor markets. Traditionally, these



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markets have shown in Latin American countries a dual dimension with large proportions of the labor force relegated to the informal market usually without any social security protection. This characteristic of labor markets has been aggravated over the recent years in Argentina because of structural reforms and the huge increase in unemployment rates.

With the obvious exception of Cuba, in most Latin American countries progress in social provision occurred under the aegis of non-socialist regimes. No structuralist regime, however, was entirely successful in achieving intended welfare goals. Failure may have reflected resistance from the private sector, the mismanagement of funds or a lack of genuine political will, as the specific case of Argentina demonstrates. Neo-liberal reform in the Chilean welfare regime, it is widely recognised, had a demonstration effect which led Argentina and Peru to follow suit.

When both, the statist and market-oriented, approach failed to yield the desired outcomes, a consensus emerged that greater equity can be promoted through the development of a broad range of participatory organisations and movements. These will be controlled by their members and directed towards fostering mutual aid and reciprocity and helping the most underprivileged groups to make their needs known to the administrative agencies of the state in a more effective manner.

Fighting Age Discrimination: the Human Rights Perspective

In the second edition of its “Changing Lives” report, the British Institute for Human Rights has made a strong case for use of Human Rights legislation as a framework for protecting and balancing everyone’s rights and delivering meaningful outcomes for people in their everyday lives. But looking beyond the legal aspect, even the language and idea of human rights are proving instrumental in challenging poor treatment and negotiating improvements in public-service provision. The Changing Lives Report credits human rights with offering a vision of equality which can protect people from ill-treatment by plugging gaps in existing anti-discrimination frameworks.

Rupert Emerson [“The fate of Human Rights in the Third World”, World Politics, Vol. 27 No. 2] has raised the significant query as to whether “the new states (of decolonised Asia and Africa) have lived up to the brave hopes and expectations that marked their birth; have they been prepared to apply to themselves the admirable principles which they have insisted upon for others?”

Equality means ensuring that all individuals (irrespective of their age) have the opportunity to live in the way they choose, according to their values; that their different needs, situations and goals are recognised and respected; and that they are treated equally with fairness, dignity and respect. In order to achieve equality in its true sense, age discrimination and ageism must first be eradicated. The Human Rights perspective has the potential to serve as a constant reminder that our foremost



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concern at all times should be recognition of worth and protection of dignity of the individual. But it can achieve this, as this paper seeks to demonstrate, only where there is widespread public awareness about what constitutes age discrimination and the social costs it imposes across diverse cultural and developmental scenarios.

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Kalyani Unkule, ILC-UK.

Baroness Sally Greengross, ILC-UK.

Lia Diachman, ILC-Argentina.