

Chapter 10

International Protection for the Human Rights of Older People: History and Future Prospects

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In this chapter the authors seek to give gerontologists, lawyers and other interested practitioners in North America a better understanding of the global picture of ageism in the workplace as it relates to international and regional human rights agreements. The legal landscape regarding age discrimination is very different around the world. In many undeveloped countries “age discrimination” is unrecognized under local laws. Even in many developed countries, age-based employment policies, such as mandatory retirement, a maximum age limit for recruitment, and age-based workforce layoffs or redundancies are common and legal practices.

Today this field of law is in a state of flux. New laws, court rulings, and international instruments and policies are being established (Kye 2009; Field and Sappideen 2009). In 2011, an ongoing working group under the auspices of the United Nations (UN) began to study older people’s human rights. These are times of change and this chapter will map and describe the progression of thinking around older people’s rights from the perspective of the need for an international and binding convention in this field.

Historically, “old age” or “age discrimination” has been unknown or ignored under international human rights laws (Rodriguez-Pinzon and Martin 2003; Doron 2005). For example, when the UN’s Universal Declaration of Human Rights

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(Universal Declaration), the general international commitment for equality in rights and freedoms, was established in 1948, it did not include “age” as a legally-prohibited distinction (Doron and Mewhinney 2007). Article 2 of the Universal Declaration states that everyone is entitled to the rights and freedoms set forth in the Declaration without any distinction, such as race, color, sex, language, religion, political or other opinion, social or national origin property, birth or other status. Here, age may be implied but is not specifically stated.

Moreover, the Declaration included very few references to older adults as a distinct category of people needing human rights protection. An example is in article 5, which provides for the right to a standard of living that is adequate for the wellbeing and health of persons and their families, and details life events relevant to this right as including unemployment, illness, disability, widowhood, old age, or other lack of livelihood beyond a person’s control.

The UN International Bill of Human Rights encompasses the Universal Declaration, the International Covenant on Civil and Political Rights (ICCPR) (1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). This important collection of documents does not contain references to older people and they all reflect a lack of awareness and political ignorance of age discrimination and ageism, as for example Article 26 of the ICCPR, and Article 7 of the ICESCR.

Keeping the historical context in mind in the first section of this chapter, the authors discuss the development of the existing international human rights framework in light of the UN system of aging policy documents. Each system has benefits and limitations, with major distinctions between binding and non-binding mechanisms for enforcement. The second section of this chapter reviews three parts of the current landscape: the problems older workers face around the world; currently-unfolding developments at the UN on older people’s rights; and the potential for an international convention on the human rights of older people. Such an agreement could be a game-changer for older workers in North America and around the world.

The Existing International Framework

Binding Versus Non-Binding Instruments

What does it mean to be *legally binding*? In international public law, the term legally binding represents a complex concept and raises questions such as: binding *to whom*? (individuals or states); binding *by what*? (by custom or by agreement); and binding *by whom* (The UN or states themselves)? For purposes of this chapter, the authors review public international law, which is based on contractual provisions, meaning international *conventions*. Countries sign on, agreeing to be bound by their word to uphold an agreement or convention. To hold them accountable, there is an enforcement mechanism that is stated within the convention itself. This may take

the form, for example, of a mechanism whereby complaints can be lodged and investigated. The extent to which a country is bound by international agreements is for every member state to decide for itself, regardless of its wealth or political status. Once it has agreed to a convention, if it does not uphold its obligations, and the rights conferred to the errant country's people are violated, those people can turn to the international community for redress through the enforcement mechanism.

Alongside the binding body of international law, there is also a non-binding element known as "soft law". In a complicated, divided and interest-driven international community, it is easier for nations to agree on *declarations*, which are non-binding in character. Despite the non-binding nature of declarations, they do play an important role. For example, although declarations are not formally binding, they have played an important role in the making of binding international law, commonly referred to as "hard law" (Gold 1983; Boyle 1999). The flexible nature of declarations can make it easier for states to implement them while taking into account their unique cultural and legal considerations—an option which does not always exist in "hard law" and binding instruments.

The authors will discuss non-binding and binding law at the international level, and then provide an overview of regional systems' treatment of older peoples' rights. Regional human rights systems around the world include the Organization of American States, the African Union, and the Council of Europe. The Arab League Council of the League of Arab States has published a charter of human rights (Arab Charter on Human Rights 1994).

Soft Law and Older Persons' Rights

Since the 1970s, a wealth of international soft law documents have been adopted by UN member states in the field of older persons' rights. This significant body of international declarations, proclamations, and plans of actions share one legal characteristic: they are not legally binding and they cannot be internationally or nationally enforced. They do not use the language of rights at all, but nonetheless show support and attention to the situations of older people.

This process began almost 40 years ago, as part of the 1974 UN World Population Conference, which adopted the World Population Plan of Action.¹ A crucial part of this plan of action was the recognition that the world is aging and there is "an urgent need...for the development of social security and health programs for the elderly."² As an outcome of this plan of action, the UN general assembly adopted a series of resolutions that culminated in a decision to convene, for the first time, a World Assembly on Ageing.³

¹ World Population Plan of Action 1974, in *Rights of Older Persons*, at 27.

² *Ibid.*, Article 12.

³ See Resolutions 33/52 of 14 December 1978; 34/153 of 17 December 1979, and 36/20 of 1981 – in *Rights of Older Persons*, *supra* note 3, at 31–33.

In 1982 the World Assembly on Ageing created the Vienna International Plan of Action on Ageing (VIPAA) which was endorsed by the UN General Assembly (United Nations 1998). This Plan of Action included significant declarations and statements. For example, it reaffirmed in the Preamble the belief that “the fundamental and inalienable rights enshrined in the Universal Declaration of Human Rights apply fully and undiminishedly to the aging” (p. 3). Moreover, it declared that all countries will “develop and apply at the international, regional, and national levels, policies designed to enhance the lives of the aging as individuals and to allow them to enjoy in mind and in body, fully and freely, their advancing years in peace, health and security”. VIPAA concentrated on two facets of population ageing: humanitarian (responding to the specific needs of older persons); and macro-economic or demographic (dealing with the implications of an ageing population for socio-economic policy). The latter focused on general concepts meant to ensure that older persons did not become a drain on national resources (UN Department of Economic and Social Affairs 2008).

As part of the implementation of VIPAA and marking its tenth anniversary, the UN General Assembly (GA) adopted the UN Principles for Older Persons (United Nations 1998), which correlate closely with the rights recognized in the ICESCR.⁴ The Principles include independence; participation; care; self-fulfillment and dignity. This document was followed by another UN General Assembly (GA) Resolution, known as the Proclamation on Ageing. Among other things, the Proclamation established the International Day of Older Persons, and declared 1999 as the International Year of Older Persons (United Nations 1998).

The final important stage in the development of “soft-law” instruments in the field of rights of older persons came about in 2002, during the second World Assembly on Ageing in Madrid. Similar to the Vienna Assembly, this meeting concluded with the creation of the Madrid International Plan of Action on Ageing (MIPAA) (United Nations 2003). MIPAA is the product of the convening of over 156 countries by the then-UN Secretary General, Kofi Annan. Unlike VIPAA, which included more general declarations on humanitarian interventions and social welfare, MIPAA adopts a life-course, inter-generational, and developmental approach. It is more concrete, by setting both “priority directions” as well as specific objectives. The general spirit of the document is toward promotion of the participation of older persons as citizens with full rights. It seeks to assure that persons everywhere are able to age with security and dignity.

For example, under “Priority Direction 1: Older Persons and Development”, MIPAA specifies an “Issue” on the topic of “Work and the Ageing Labour Force.” Its objective is “Employment opportunities for all older persons who want to work.” Toward that end, it recommends that countries should enable older persons to continue working as long as they want to work and are able to do so. MIPAA is

⁴ECOSOC, Comm. on Econ., Soc. & Cultural Rts., 13th session, GENERAL COMMENT NO. 6: THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF OLDER PERSONS, Para. 5, U.N. Doc. E/C.12/1995/16/Rev.1 (1995).

a comprehensive document that touches upon almost all key areas relevant to older persons, not only identifying these areas but also setting priorities and objectives. Its major drawback is that it is a non-binding document; it lacks both targets and implementation monitoring.

MIPAA calls for the full employment of older persons in satisfying and productive work, linking it to continuing access to education and training programs (United Nations 2003). MIPAA builds on the conquest of world poverty, social integration, and full employment agreed upon in the Copenhagen Declaration and Programme of Action at the 1995 World Summit for Social Development. There, the world committed to the goal of full employment, and this commitment should be inclusive of older persons as long as they are able and willing to work, in the same spirit as MIPAA (Venne, n.d.).

In 2012, the world will mark the tenth anniversary of MIPAA. There is little reason for celebration. Because MIPAA (and the rest of the soft law instruments in the field) is not a legally binding document, there is no mandatory procedure through which member states regularly inform the UN about their implementation efforts. Such reports are scarce, and presently there is no comprehensive information about, or assessment of, national implementation or success in bettering the lives of older persons. Some recent UN reports regarding the follow-up to MIPAA suggest there are significant barriers to the successful implementation of MIPAA (e.g., lack of data, financial constraints, gaps between formal policies and realities and more).⁵

From a normative perspective, the authors conclude that the needs of older people have not been met by the Vienna Plan, the Madrid Plan, or the UN Principles for Older Persons. In these plans, created over the course of nearly two decades, nations have set policies that have been ignored, and action plans that have been abandoned. A statement of principles is not enough to create accountability on the part of states. There is no explicit reference to international human rights mechanisms. Furthermore, the existing discussion has focused on economic, social and cultural rights, not civil and political rights. Hence, it was not surprising that the Bonn 2009 UN Expert Group, which studied the rights of older persons on the international level, concluded:

The UN policy documents on ageing and older persons provide a comprehensive treatment of issues and public policy strategies but as “soft law”, they contain no legally binding obligations and there are no sanctions for non-performance. Instead, they incorporate norms and precepts, which governments agree to be guided by, but without any requirement to account for adherence. (p. 15) (Doron and Apter 2010b).

Binding Instruments

When moving from the soft law or non-binding sphere into the binding sphere, the picture is different. In contrast to the wealth of soft-law documents, there are almost no binding international documents dedicated or targeted to the rights of older

⁵For example, see Follow-up to the Second World Assembly on Ageing , 19 July 2006.

persons. No comprehensive and binding framework on the human rights of older people currently exists, and to date, international bodies have given only piecemeal attention to this issue. This reality has been mentioned in recent years by various scholars (Doron 2005; Megret 2011), and was also summarized by Rodriguez-Pinzon and Martin (2003):

A strategy to have a comprehensive legal instrument on elderly rights is missing at the international level in both universal and regional systems. There are very few provisions in international law that directly address elderly rights. There are isolated efforts by certain international bodies to systematically refer to the rights of the elderly when interpreting their corresponding conventions....

However, there is no specific international body with the mandate to focus on the rights of the elderly. Nor is there an elderly rights convention in place. It is in fact the only vulnerable population that does not have a comprehensive and/or binding international instrument addressing their rights specifically (Rodriguez-Pinzon & Martin, p. 1008).

The best known human rights agreements—the International Covenant of Civil and Political Rights⁶ and the International Covenant on Economic, Social and Cultural Rights,⁷—contain almost no explicit or direct reference to older persons. The most important development in securing the human rights of older people may have been made by the Committee on Economic, Social and Cultural Rights, in publishing its General Comment 6 on The Economic, Social and Cultural Rights of Older Persons.⁸ This General Comment interprets and constructs the different relevant articles of ICESCR as they apply specifically to older persons. Tangentially, General Comment 19, on the Right to Social Security, clearly articulates these rights for older people.

The Convention on the Elimination of Discrimination against Women (CEDAW) has provided some of the strongest language for the human rights of older women in recent years in its General Recommendation 27. It highlights that women are less likely to be included in formal employment, and are often paid less for the same work as men while accruing fewer pension benefits for time spent out of the labor force. Older women in the labor force, the General Recommendation 27 notes, are often the sole caregivers for dependent children, spouses and relatives.⁹ General Recommendation 27 provides policy guidance for protecting the human rights of older women in the workforce; 187 parties have signed on, making it one of the most universal of all recommendations.

Other documents focus on issues relating to older people in topical areas: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) mentions older people. The International Labour Organization has a Convention on Social Security in old age.¹⁰ The fourth Geneva Convention, in its treatment of attending to civilians in armed conflict,

⁶ In Rights of Older Persons, at 447.

⁷ Ibid, at 449.

⁸ Ibid, at 67.

⁹ Committee for the Elimination of All Forms of Discrimination against Women, General Recommendation 27, para. 20.

¹⁰ Ibid, at 337.

mentions older people in Articles 14 and 17.¹¹ These and other international documents explicitly mention older people, but only in provisions that group together a large catalogue of vulnerable persons. Thus, they have little impact and do not address the complexity of the rights of older persons.

Recently, the countries agreed to a Convention on the Rights of Persons with Disabilities at the UN. This most recent human rights convention includes key binding features that are of great importance and relevance for the rights of older persons (e.g., those involving legal capacity, guardianship, housing and accessibility). Some scholars have already pointed to the relevance of this convention to the advancement of rights of older persons (Kanter 2009). However, there is not enough experience with this convention to assess its implication for older persons.

The existing international system for securing the human rights of older persons is scattered. A mention here, and a nod there, have not created a unified system of claimable rights. A viable recognition of the rights of older people would be unified; it would pull together and clarify disparate rights. It requires a convention that interprets the rights of older persons through the already-agreed-upon language of human rights. Such a convention would empower older people from all walks of life, from those in nursing homes, to those pursuing their careers in the community.

Regional Instruments

In some world regions, the human rights of older people are reflected in various declarations and in case law established by regional courts. For example, the African Charter on Human and Peoples' Rights has almost no direct reference to older persons. However, its Article 29 stipulates that each individual must respect and maintain his or her parents in case of need (African Union 1986). Moreover, Article 18 states that "the aged and the disabled shall also have the rights for special measures of protection in keeping with their physical or moral needs." The African Commission on Human and Peoples' Rights are moving forward to clarify these provisions of the African Charter on Human and Peoples' Rights.

In the Inter-American System, consisting of North America, South America, Central America and the Caribbean, the current legal picture is not significantly different. The original binding documents on human rights, The American Declaration on the Rights and Duties of Man, promulgated in 1948 and the later American Convention on Human Rights of 1969, did not include specific reference to older persons. However, in 1988, the Conference of American States added the following provisions as part of the Additional Protocol to the American Convention on Human Rights (also known as the Protocol of San Salvador)¹²:

¹¹ Ibid, at 445.

¹² Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Nov. 17, 1988, art. 17. (Protocol of San Salvador),

Article 17: Protection of the Elderly: Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

- (a) Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;
- (b) Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
- (c) Foster the establishment of social organizations aimed at improving the quality of life for the elderly”.¹³

This binding commitment was also supported by soft-law instruments such as the Declaration of the Latin American and Caribbean Meeting of Leaders of Organizations of Older People in 2001 (also known as The Declaration of Lima)¹⁴; and the Declaration of the Pan American Symposium on Ageing and Health: Innovative Approaches to Health and Social Services for the Elderly.¹⁵

As with the international UN, the regional Organization of American States is in the process of establishing a working group on the human rights of older persons. As early as 2012, it will produce a report on the human rights situation of older people in the Americas, as well as a draft Inter-American Convention on the Human Rights of Older Persons.¹⁶

The most sophisticated and strongest regional legal infrastructure is found in Europe. European agreements combine a traditional international convention (the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950) with a novel supranational Charter of Fundamental Rights of the European Union (2000). Yet even the European Convention for the Protection of Human Rights does not include “age” among its grounds of prohibited discrimination listed in Article 14 “Prohibition of Discrimination.”¹⁷ Nevertheless, as a binding legal instrument, with enforcement mechanisms that allow for individual complaints to an international court, there is ample evidence of older persons exercising their rights by law under this convention. Indeed, the European court of human rights has heard many cases regarding social security for older people after retirement and has upheld the rights of older people to fair trials, to property (in their pensions), and, potentially, to freedom from discrimination on the basis of an “other status” (Rodriguez-Pinzon and Martin 2003). The European experience proves that when an enforceable convention exists, older persons can take advantage of it, and promote their rights through an international mechanism.

¹³ See Protocol of San Salvador, Article 17.

¹⁴ See in Rights of Older Persons, *supra* note 1, at 174.

¹⁵ *Ibid*, at 180.

¹⁶ OEA/Ser.G/CP/CAJP-3017/11, Installation of the Working Group Envisaged Under Resolution AG/RES. 2654 (XLI-O/11), 14 September 2011.

¹⁷ *Ibid* at 239. It should be noted however that in Article 21 of the European Charter of Fundamental Rights, regarding “Non-discrimination” age as a specific legal category has been included.

The Islamic world has also established a soft-law document on the rights of older persons. As part of a symposium held in Kuwait during 1999, the Islamic countries adopted a declaration known as the Declaration on the Rights of Elderly – an Islamic Perspective.¹⁸ This declaration included statements such as, “The elderly have rights that should be recognized and admitted by their communities” (Article 3). However, this Declaration has no binding force.¹⁹

These various documents represent advances over an earlier era when no protection existed for the human rights of older persons. However, the overall picture is similar to that in the general international sphere: On the regional level there is a large collection of “soft law” declarations along with very few, scattered and minimally binding “hard” law conventions that address the human rights of older persons. In most cases, references to older persons are presented in the context of dependence and weakness. And there is little evidence that provisions to safeguard the human rights of elderly and dependent persons are used in international tribunals. The only exception is in Europe, where both the European Court of Human Rights and the European Court of Justice have been instrumental in promoting rights of older persons and enforcing European international and supra-national hard-law instruments.

Current State of the World’s Older Workers

For many older people, livelihoods depend on their ability to maintain employment. Older people rank among the poorest people in the poorest countries around the world (Barrientos et al. 2003). The rights that older people in the US take for granted are not even thought of as rights in many parts of the world. For example, anti-age discrimination laws in employment often do not exist or are perceived as novel. Retirement decisions are dictated by mandatory retirement ages, which are still legal and prevalent in most countries in the world (Office of the High Commission for Human Rights 2010). Less than 20 % of the world’s population receives any sort of pension (UN Department of Economic and Social Affairs 2007).

The right to work free of abuse in the workplace is a civil right. Article 1 of the ICCPR declares “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” All older people have a right to employment and pursuit of economic development with dignity and freedom from discrimination and abuse in the workplace.

Implementation of an international convention on the human rights of older people would have real and immediate gains for older workers. By outlawing age

¹⁸ See in Rights of Older Persons, supra note 1, at 234.

¹⁹ See also The Arab Plan of Action on Ageing to the Year 2012 (APAA). Online (last accessed: October 3, 2011) <http://www.escwa.un.org/popin/docs/ArabPlanofActionAgeing2012Eng.pdf>

discrimination in hiring practices, older people would be free to apply for and retain positions for which they are qualified. Today this is not the case in much of the world. For example, it is not uncommon for employment ads from other countries to state that applicants must be under the age of 30. The Supreme Court of Bangladesh recently ousted the Nobel Prize-winning Muhammad Yunus from his post as managing director of Grameen Bank, under a retirement law requiring that older workers obtain government approval to remain in the workforce after retirement age (Pilapil 2011).

In addition to age, health is a key factor in the ability of older workers to remain in the workforce. In a 2011 report, UN Special Rapporteur on the Human Right to Health, Anand Grover, noted, “Society should move beyond seeking simply healthy ageing for its citizens, and begin working towards active and dignified ageing, which should be planned and supported just like any other stage of the individual’s life course” (Human Rights Council 2011).

Current and Future Developments

UN’s Open-Ended Working Group on Ageing

In 2010, as a follow-up to the 2002 Second World Assembly on Ageing, the UN General Assembly established an Open-Ended Working Group “for the purpose of strengthening the protection of the human rights of older persons by considering the existing international framework of the human rights of older persons and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures...”²⁰

At its first meeting in April 2011, the Working Group explored gaps in the existing legal framework. It heard from representatives of member states, the International Labour Organization, the United Nations Population Fund, the Office of the High Commissioner for Human Rights, and representatives of NGO’s.

At its next meeting in August 2011, the discussion continued and became more specific. The European Union and its member states came out staunchly against a convention while many Latin American countries stood strongly in favor. Few Asian or African countries were present. In order to gain true accord, full participation of all regions is necessary for the legitimacy of any agreement and the true representation of older people. Developing countries with young populations should remember that life expectancy at age 65 does not differ greatly between the developed and the developing world (UN Department of Economic and Social Affairs 2009). Older people in developing countries are particularly invisible, yet have a necessary and unique role to play in their countries’ development. Thus, the authors hope that Asian and African countries will

²⁰ UN Document A/RES/65/182 Follow-Up to the Second World Assembly on Ageing.

be better represented at the next meeting of the Open-Ended Working Group, which will be in the summer of 2012.

A Convention

The need for a specific and unique convention for the rights of older persons is on the frontlines of international debate. Several commentators have made strong arguments in favor of such a convention. For example, Tang and Lee (2006) argued that:

Overall, the convention would define older people's rights as human rights and demonstrate that the abrogation of human rights is not acceptable. It would stipulate positive obligations on nations to realize equality and the enjoyment of rights by older people. The treaty would considerably expand the concept of human rights protection for older people, since it would not be only about refraining from doing harm or placing negative obligations on the participating states, but would also lay down norms in order to assist older people to attain a status comparable with that of the rest of the population. To achieve these goals, national governments would be required to ensure that the rights set forth in the convention were reflected in their national legislation. (p. 1143).

Along similar lines, the UN Expert Group (2009) concluded:

A convention on the rights of older persons would add additional weight in furthering, deepening and more precisely defining the rights of older persons. A convention would create obligatory and binding international law. Similar to the adoption of various other human rights instruments, member states would undertake a threefold commitment when adopting such a convention: to respect, to protect and to fulfill the rights enshrined in the relevant text (p. 18).

Despite the clarity of these statements, there is still no strong consensus for a convention for the rights of older persons in the international community. As described by Doron and Apter (2010a, b), there are also voices and arguments against such a convention. Opponents rely on evidence from past experience which indicates that human rights conventions—in and by themselves—do not make a difference to the lives of the disadvantaged. Not only are they not implemented in practice, but in some cases the political compromises that are part of the international bargaining process result in an infringement of material rights. For example, great criticism has been directed at the decision by CEDAW's drafters to ignore honor killings due to political pressure, focusing only on domestic violence (Doron and Apter 2010b). Hence, opponents argue, it is better for older persons to work to improve and implement existing soft law instruments in the field of aging.

While these critiques are important and relevant, Doron and Apter conclude in their article that the counter arguments outweigh them. A convention on the human rights of older people would establish touchstones for legal protection of the rights of older people which are routinely violated. A rising tide lifts all boats, and a convention would set standards for the world. An important outcome of a convention would be the creation of an initial "floor" of bare-bones protections of older persons: a legal "floor" which does not exist today. Implementation of a future convention would include enforcement mechanisms such as a reporting system, ongoing monitoring, and a procedure for individual complaints.

An international convention has impact beyond the signatory countries and beyond its narrow legal impact. Past experiences prove that even countries which are not party to an agreement will look to existing conventions as bench-marks for their legal systems. On the symbolic and education fronts, binding international human rights conventions have proven to be an important tool of political discourse and rhetoric for non-governmental organizations (NGOs) and civil society to change social attitudes towards disadvantaged and excluded social groups.

This was well summarized in 2009 by the (UN Secretary General 2009) regarding the potential importance of a future convention for the rights of older persons:

A convention would clarify and consolidate existing international norms with respect to the rights of older persons, and it would encourage a more equitable allocation of needed resources for older persons. A convention would clarify the specific obligations of States in order to ensure the full enjoyment of recognized human rights of older persons. It would also empower older persons and provide the framework for national legislation. Moreover, it would provide older persons greater visibility and recognition nationally and internationally as well as the basis for advocacy, public awareness and education on the rights of older persons (p. 16).

Rights protection for older persons in the US and Canada would be far ahead of the provisions of any consensus for a UN convention (at least in its non-discrimination elements). Thanks in part to our system of civil and political rights, older people in North America are important voters, wielding a political force that would be unheard-of in many other countries. Right now, older persons in North America have not rallied behind a convention. However, once a movement to secure the human rights of older people takes hold, it may be hard to stop. That is because where national movements toward equality and non-discrimination go, international movements follow. Conversely, where international conventions lead, countries can follow too.

This would be the more likely scenario for North American countries. US participation in a convention would be an unlikely event in the initial stages, given its historical standoffishness to most other human rights treaties. If the US agreed to participate, signing an international human rights treaty is the first step signaling readiness to implement a treaty, but it is by no means the last. An inter-agency review process that informs consideration by the Senate follows signing. A review would look at existing federal laws, such as the Older Americans Act, as well as state laws. Ratification of any treaty by the United States requires a 'Resolution of Ratification,' that can be achieved only by the support of two-thirds of the Senate. The US' accession in international human rights conventions is a controversial political undertaking. However, in all countries, actual domestic implementation of a convention on the human rights of older persons would be heavily dependent on sub-national dynamics (Hathaway 2005).

Making passage of a human rights convention for the elderly more likely in the US and Canada, is the high participation of the elderly in elections. For example, according to the US Census Bureau, over 70% of voters between the ages of 65 and 74 voted in the 2008 elections. By comparison, only slightly more than 50% of people aged 25–45 voted. Older people tend to vote in much higher numbers than any other age group (US Census Bureau 2008). They claim their political power in a way that many groups facing disadvantages—including groups of older people—cannot do in other parts of the world.

On the international human rights sphere, both on the global and regional levels, the employment rights of older workers have been a blind spot in the field of the rights of older persons. “Hard” international law makes little reference to these issues; it tends to focus on social security, which is an unlikely scenario for most older people. “Soft” international law has no binding effect; and regional instruments (except for those in the European Union) also have failed to directly address these rights in an effective manner. A new international and binding convention, specifically addressing the rights of older persons, might make a difference. To be effective, a future convention must include age as a prohibited ground for discrimination and must state that ageism is illegal in all its manifestations. It should recognize the rights of older workers by including: heightened protections against age discrimination; recognition of the contribution of older workers; heightened job protection to prevent older people from being pushed out of the workplace through harassment; the right to ongoing education and on-work training to allow older workers to adapt to changing technologies and working environments; and flexible and part-time working rights to accommodate sickness or disability.

On an individual level, work and civic engagement can increase health, well-being, and a sense of self-worth in older adults. These traits translate into the human rights concepts of agency; the right to participation in society; the right to health; and the right to be free of discrimination.

On a societal level, the engagement of older persons enriches society. Older persons are not just the recipients of care. They mentor colleagues in the workplace. They are repositories of cultural and institutional knowledge. They have experience that, despite the rapid pace of societal change, is relevant and valuable to society as a whole.

A prominent law professor once wrote, “It is easy to determine whether a state has ratified a treaty; it is much more difficult to evaluate whether it is complying with it” (Hathaway 2005, p. 507). But a convention would do much more than provide another way for countries to support rights. A convention would contribute to compliance. It would pave the way for societal change and improve the working lives of older people, as recognition of their rights becomes more routinely protected and commonplace, on equal footing with other groups. This would go a long way toward creating “*A Society for all Ages.*”

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