

Annex IV

GENERAL COMMENT NO. 6 (1995)\*

The economic, social and cultural rights  
of older persons

1. Introduction

1. The world population is ageing at a steady, quite spectacular rate. The total number of persons aged 60 and above rose from 200 million in 1950 to 400 million in 1982 and is projected to reach 600 million in the year 2001 and 1.2 billion by the year 2025, at which time over 70 per cent of them will be living in what are today's developing countries. The number of people aged 80 and above has grown and continues to grow even more dramatically, rising from 13 million in 1950 to over 50 million today, and is projected to increase to 137 million in 2025. This is the fastest growing population group in the world, projected to increase by a factor of 10 between 1950 and 2025, compared with a factor of six for the group aged 60 and above and a factor of little more than three for the total population. 1/

2. These figures are illustrations of a quiet revolution, but one which has far-reaching and unpredictable consequences and which is now affecting the social and economic structures of societies both at the world level and at the country level, and will affect them even more in the future.

3. Most of the States parties to the Covenant, and the industrialized countries in particular, are faced with the task of adapting their social and economic policies to the ageing of their populations, especially as regards social security. In the developing countries, the absence or deficiencies of social security coverage are being aggravated by the emigration of the younger members of the population and the consequent weakening of the traditional role of the family, the main support of older people.

2. Internationally endorsed policies in relation to older persons

4. In 1982, the World Assembly on Ageing adopted the International Plan of Action on Ageing. This important document was endorsed by the General Assembly and is a very useful guide, for it details the measures that should be taken by Member States to safeguard the rights of older persons within the context of the rights proclaimed by the International Covenants on Human Rights. It contains 62 recommendations, many of which are of direct relevance to the International Covenant on Economic, Social and Cultural Rights. 2/

5. In 1991, the General Assembly adopted the United Nations Principles for Older Persons, which, because of their programmatic nature, also constitute an important document in the present context. 3/ The Principles are divided

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\* Adopted at the thirteenth session (39th meeting), on 24 November 1995.

into five sections which correlate closely to the rights recognized in the Covenant. The section entitled "Independence" includes access to adequate food, water, shelter, clothing and health care. To these basic rights are added the opportunity for remunerated work and access to education and training. Under "Participation", it is stated that older persons should participate actively in the formulation and implementation of policies that affect their well-being and share their knowledge and skills with younger generations, and should be able to form movements and associations. The section headed "Care" proclaims that older persons should benefit from family care and health care and be able to enjoy human rights and fundamental freedoms when residing in a shelter, care or treatment facility. With regard to "Self-fulfilment", the Principles state that older persons should be able to pursue opportunities for the full development of their potential through access to the educational, cultural, spiritual and recreational resources of their societies. Lastly, the section entitled "Dignity" states that older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse, should be treated fairly, regardless of age, gender, racial or ethnic background, disability or other status, and should be valued independently of their economic contribution.

6. In 1992, the General Assembly adopted eight global targets on ageing for the year 2001 and a brief guide for setting national targets. In a number of important respects, these global targets serve to reinforce the obligations of States parties to the Covenant. 4/

7. Also in 1992, and in commemoration of the tenth anniversary of the adoption of the International Plan of Action on Ageing, the General Assembly adopted the Proclamation on Ageing, in which it urged support of national initiatives on ageing so that older women are given adequate support for their largely unrecognized contributions to society and older men are encouraged to develop social, cultural and emotional capacities which they may have been prevented from developing during breadwinning years; so that families are supported in providing care and all family members encouraged to cooperate in caregiving; and so that international cooperation is expanded in the context of the strategies for reaching the global targets on ageing for the year 2001. It also proclaimed the year 1999 as the International Year of Older Persons in recognition of humanity's demographic "coming of age". 5/

8. The United Nations specialized agencies, especially ILO, have also given attention to the problem of ageing in their respective fields of competence.

3. The rights of older persons in relation to the International Covenant on Economic, Social and Cultural Rights

9. The terminology used to describe older persons varies considerably, even in international documents. It includes: "older persons", "the aged", "the elderly", "the third age", "the ageing" and, to denote persons more than 80 years of age, "the fourth age". The Committee has opted for "older persons" (in French, personnes âgées; in Spanish, personas mayores), the term employed in General Assembly resolutions 47/5 and 48/98. According to the practice in the United Nations statistical services, these terms cover persons aged 60 and above. (The statistical service of the European Union, Eurostat,

considers "older persons" to mean persons aged 65 or above, since 65 is the most common age of retirement and the trend is towards later retirement still.)

10. The International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although article 9, dealing with "the right of everyone to social security, including social insurance", implicitly recognizes the right to old-age benefits. Nevertheless, in view of the fact that the Covenant's provisions apply fully to all members of society, it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant. This approach is also fully reflected in the International Plan of Action on Ageing. Moreover, in so far as respect for the rights of older persons requires special measures to be taken, States parties are required by the Covenant to do so to the maximum of their available resources.

11. Another important issue is whether discrimination on the basis of age is prohibited by the Covenant. Neither the Covenant nor the Universal Declaration of Human Rights refers explicitly to age as one of the prohibited grounds. Rather than being seen as an intentional exclusion, this omission is probably best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now.

12. This is not determinative of the matter, however, since the prohibition of discrimination on the grounds of "other status" could be interpreted as applying to age. The Committee notes that, while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited. Moreover, it must be emphasized that the unacceptableness of discrimination against older persons is underlined in many international policy documents and is confirmed in the legislation of the vast majority of States. In the few areas in which discrimination continues to be tolerated, such as in relation to mandatory retirement ages or access to tertiary education, there is a clear trend towards the elimination of such barriers. The Committee is of the view that States parties should seek to expedite this trend to the greatest extent possible.

13. Accordingly, the Committee on Economic, Social and Cultural Rights is of the view that States parties to the Covenant are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons. The Committee's own role in this regard is rendered all the more important by the fact that, unlike the case of other population groups such as women and children, no comprehensive international convention yet exists in relation to the rights of older persons and no binding supervisory arrangements attach to the various sets of United Nations principles in this area.

14. By the end of its thirteenth session, the Committee and its predecessor, the Sessional Working Group of Governmental Experts, had examined 153 initial reports, 71 second periodic reports and 25 global reports on articles 1 to 15 of the Covenant. This work made it possible to identify many of the problems that may be encountered in implementing the Covenant in a considerable number

of States parties representing all the regions of the world and having different political, socio-economic and cultural systems. The reports examined to date have not provided any information in a systematic way on the situation of older persons as regards compliance with the Covenant, apart from information, of varying completeness, on the implementation of article 9 relating to the right to social security.

15. In 1993, the Committee devoted a day of general discussion to this issue to assist it in formulating its views. Moreover, it has, at recent sessions, begun to attach substantially more importance to information on the rights of older persons and its questioning has elicited some very valuable information in some instances. Nevertheless, the Committee notes that the great majority of States parties' reports continue to make little reference to this important issue. It therefore wishes to indicate that, in future, it will insist that the situation of older persons in relation to each of the rights recognized in the Covenant should be adequately addressed in all reports. The remainder of this General Comment identifies the specific issues which are relevant in this regard.

#### 4. General obligations of States parties

16. Older persons as a group are as heterogeneous and varied as the rest of the population and their situation depends on a country's economic and social situation, on demographic, environmental, cultural and employment factors and, at the individual level, on the family situation, the level of education, the urban or rural environment, and the occupation of workers and retirees.

17. Side by side with older persons who are in good health and whose financial situation is acceptable, there are many who do not have adequate means of support, even in developed countries, and who feature prominently among the most vulnerable, marginal and unprotected groups. In times of recession and of restructuring of the economy, older persons are particularly at risk. As the Committee has previously stressed (General Comment No. 3 (1990), para. 12), even in times of severe resource constraints, States parties have the duty to protect the vulnerable members of society.

18. The methods that States parties use to fulfil the obligations they have assumed under the Covenant in respect of older persons will be basically the same as those for the fulfilment of other obligations (see General Comment No. 1 (1989)). They include the need to determine the nature and scope of problems within a State through regular monitoring, the need to adopt properly designed policies and programmes to meet requirements, the need to enact legislation when necessary and to eliminate any discriminatory legislation, and the need to ensure the relevant budget support or, as appropriate, to request international cooperation. In the latter connection, international cooperation in accordance with articles 22 and 23 of the Covenant may be a particularly important way of enabling some developing countries to fulfil their obligations under the Covenant.

19. In this context, attention may be drawn to Global target No. 1, adopted by the General Assembly in 1992, which calls for the establishment of national support infrastructures to promote policies and programmes on ageing in national and international development plans and programmes. In this regard, the Committee notes that one of the United Nations Principles for Older

Persons which Governments were encouraged to incorporate into their national programmes is that older persons should be able to form movements or associations of older persons.

5. Specific provisions of the Covenant

Equal rights of men and women (art. 4)

20. In accordance with article 3 of the Covenant, by which States parties undertake "to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights", the Committee considers that States parties should pay particular attention to older women who, because they have spent all or part of their lives caring for their families without engaging in a remunerated activity entitling them to an old-age pension, and who are also not entitled to a widow's pension, are often in critical situations.

21. To deal with such situations and comply fully with article 9 of the Covenant and paragraph 2 (h) of the Proclamation on Ageing, States parties should institute non-contributory old-age benefits or other assistance for all persons, regardless of their sex, who find themselves without resources on attaining an age specified in national legislation. Given their greater life expectancy and the fact that it is more often they who have no contributory pensions, women would be the principal beneficiaries.

Rights relating to work (arts. 6-8)

22. Article 6 of the Covenant requires States parties to take appropriate steps to safeguard the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted. In this regard, the Committee, bearing in mind that older workers who have not reached retirement age often encounter problems in finding and keeping jobs, stresses the need for measures to prevent discrimination on grounds of age in employment and occupation. 6/

23. The right "to the enjoyment of just and favourable conditions of work" (art. 7 of the Covenant) is of special importance for ensuring that older workers enjoy safe working conditions until their retirement. In particular, it is desirable to employ older workers in circumstances in which the best use can be made of their experience and know-how. 7/

24. In the years preceding retirement, retirement-preparation programmes should be implemented, with the participation of representative organizations of employers and workers and other bodies concerned, to prepare older workers to cope with their new situation. Such programmes should, in particular, provide older workers with information about their rights and obligations as pensioners; the opportunities and conditions for continuing an occupational activity or undertaking voluntary work; means of combating detrimental effects of ageing; facilities for adult education and cultural activities; and the use of leisure time. 8/

25. The rights protected by article 8 of the Covenant, namely trade union rights, including after retirement age, must be applied to older workers.

Right to social security (art. 9)

26. Article 9 of the Covenant provides generally that States parties "recognize the right of everyone to social security", without specifying the type or level of protection to be guaranteed. However, the term "social security" implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.

27. In accordance with article 9 of the Covenant and the provisions concerning implementation of the ILO social security conventions - Convention No. 102 (1952) concerning Social Security (Minimum Standards) and Convention No. 128 (1967) concerning Invalidity, Old-Age and Survivors' Benefits - States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.

28. In keeping with the recommendations contained in the two ILO Conventions mentioned above and with ILO Recommendation No. 162 concerning Older Workers, the Committee invites States parties to establish retirement age so that it is flexible, depending on the occupations performed and the working ability of elderly persons, with due regard to demographic, economic and social factors.

29. In order to give effect to the provisions of article 9 of the Covenant, States parties must guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.

30. Furthermore, as already observed in paragraphs 20 and 21 above, in order fully to implement the provisions of article 9 of the Covenant, States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefits or assistance and have no other source of income.

Protection of the family (art. 10)

31. In accordance with article 10, paragraph 1, of the Covenant and recommendations 25 and 29 of the International Plan of Action on Ageing, States parties should make all the necessary efforts to support, protect and strengthen the family and help it, in accordance with each society's system of cultural values, to respond to the needs of its dependent ageing members. Recommendation 29 encourages Governments and non-governmental organizations to establish social services to support the whole family when there are elderly people at home and to implement measures especially for low-income families who wish to keep elderly people at home. This assistance should also be provided for persons living alone or elderly couples wishing to remain at home.

Right to an adequate standard of living (art. 11)

32. Principle 1 of the United Nations Principles for Older Persons, which stands at the beginning of the section relating to the independence of older persons, provides that: "Older persons should have access to adequate food,

water, shelter, clothing and health care through the provision of income, family and community support and self-help." The Committee attaches great importance to this principle, which demands for older persons the rights contained in article 11 of the Covenant.

33. Recommendations 19 to 24 of the International Plan of Action on Ageing emphasize that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account. Accordingly, national policies should help elderly persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them (recommendation 19). Recommendation 20 stresses the need for urban rebuilding and development planning and law to pay special attention to the problems of the ageing, assisting in securing their social integration. Recommendation 22 draws attention to the need to take account of the functional capacity of the elderly in order to provide them with a better living environment and facilitate mobility and communication through the provision of adequate means of transport.

Right to physical and mental health (art. 12)

34. With a view to the realization of the right of older persons to the enjoyment of a satisfactory standard of physical and mental health, in accordance with article 12, paragraph 1, of the Covenant, States parties should take account of the content of recommendations 1 to 17 of the International Plan of Action on Ageing, which focus entirely on providing guidelines on health policy to preserve the health of the elderly and take a comprehensive view, ranging from prevention and rehabilitation to the care of the terminally ill.

35. Clearly, the growing number of chronic, degenerative diseases and the high hospitalization costs they involve cannot be dealt with only by curative treatment. In this regard, States parties should bear in mind that maintaining health into old age requires investments during the entire life-span, basically through the adoption of healthy lifestyles (food, exercise, elimination of tobacco and alcohol, etc.). Prevention, through regular checks suited to the needs of older persons, plays a decisive role, as does rehabilitation, by maintaining the functional capacities of older persons, with a resulting decrease in the cost of investments in health care and social services.

Right to education and culture (arts. 13-15)

36. Article 13, paragraph 1, of the Covenant recognizes the right of everyone to education. In the case of older persons, this right must be approached from two different and complementary points of view: (a) the right of older persons to benefit from educational programmes; (b) making the know-how and experience of older persons available to younger generations.

37. With regard to the former, States parties should take account of: (a) the recommendation in principle 4 of the United Nations Principles for Older Persons to the effect that older persons should have access to suitable education programmes and training and should, therefore, on the basis of their

preparation, abilities and motivation, be given access to the various levels of education through the adoption of appropriate measures regarding literacy training, lifelong education, access to university, etc.;

(b) recommendation 47 of the International Plan of Action on Ageing, which, in accordance with the concept of lifelong education promulgated by the UNESCO, recommends informal, community-based and recreation-oriented programmes for older persons in order to develop their sense of self-reliance and community responsibility. Such programmes should enjoy the support of national Governments and international organizations.

38. With regard to use of the know-how and experience of older persons, as referred to in the recommendations of the International Plan of Action on Ageing dealing with education (paras. 74-76), attention is drawn to the important role that elderly and old persons still play in most societies as the transmitters of information, knowledge, traditions and spiritual values and to the fact that this important tradition should not be lost. Consequently, the Committee attaches particular importance to the message contained in recommendation 44 of the Plan of Action: "Educational programmes featuring the elderly as the teachers and transmitters of knowledge, culture and spiritual values should be developed."

39. In article 15, paragraph 1 (a) and (b), of the Covenant, States parties recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications. In this respect, the Committee urges States parties to take account of the recommendations contained in the United Nations Principles for Older Persons, in particular principle 7: "Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations"; and principle 16: "Older persons should have access to the educational, cultural, spiritual and recreational resources of society".

40. Similarly, recommendation 48 of the International Plan of Action on Ageing encourages Governments and international organizations to support programmes aimed at providing older persons with easier physical access to cultural institutions (museums, theatres, concert halls, cinemas, etc.).

41. Recommendation 50 of the Plan of Action stresses the need for Governments, non-governmental organizations and older persons themselves to make efforts to overcome negative stereotyped images of older persons as suffering from physical and psychological disabilities, incapable of functioning independently and having neither role nor status in society. These efforts, in which the media and educational institutions should also take part, are essential for achieving a society that champions the full integration of older persons.

42. With regard to the right to enjoy the benefits of scientific progress and its applications, States parties should take account of recommendations 60, 61 and 62 of the International Plan of Action on Ageing and make efforts to promote research on the biological, mental and social aspects of ageing and on ways of maintaining functional capacities and preventing and delaying the start of chronic illnesses and disabilities. In this connection, it is recommended that States, intergovernmental organizations and non-governmental

organizations should establish institutions specializing in the teaching of gerontology, geriatrics and geriatric psychology in countries where such institutions do not exist.

Notes

1/ See "Global targets on ageing for the year 2001: a practical strategy", report of the Secretary-General (A/47/339), para. 5.

2/ See Report of the World Assembly on Ageing, Vienna, 26 July to 6 August 1982 (United Nations publication, Sales No. E.82.I.16), chap. VI.

3/ See General Assembly resolution 46/91 of 16 December 1991, entitled "Implementation of the International Plan of Action on Ageing and related activities", annex.

4/ See "Global targets on ageing for the year 2001: a practical strategy", report of the Secretary-General (A/47/339), sects. III and IV.

5/ See General Assembly resolution 47/5 of 16 October 1992, entitled "Proclamation on Ageing", annex.

6/ See ILO Recommendation No. 162 (1980) concerning Older Workers, paras. 3-10.

7/ Ibid, paras. 11-19.

8/ Ibid, para. 30.

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