



# General Assembly

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## Open-ended Working Group on Ageing

### Fourth working session

New York, 12-15 August 2013

## Report of the Open-ended Working Group on Ageing

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### I. Organization of the session

#### A. Opening and duration of the session

1. The Open-ended Working Group on Ageing, established by the General Assembly in its resolution [65/182](#) for the purpose of strengthening the protection of the human rights of older persons, held its fourth working session at United Nations Headquarters from 12 to 15 August 2013. The Working Group held seven meetings.

2. The session was opened by the Chair of the Working Group, Mateo Estrémé (Argentina).

#### B. Attendance

3. The session was attended by representatives of States Members of the United Nations. Representatives of organizations of the United Nations system and observers for intergovernmental and non-governmental organizations also attended. A list of participants is available in document [A/AC.278/2013/INF/1](#) (see also <http://social.un.org/ageing-working-group/fourthsession.shtml>).

#### C. Election of officers

4. At the 1st meeting of the session, on 12 August, the Working Group elected, by acclamation, Stelios Makriyiannis (Cyprus) and Alexandros Yennimatas (Greece) as Vice-Chairs.

5. At the same meeting, the Working Group agreed, on an exceptional basis, that Federico Villegas Beltrán, Director of the Division of Human Rights, Ministry of Foreign Affairs and Worship of Argentina, would temporarily replace Mateo Estrémé (Argentina) as Chair from 12 to 15 August 2013.



## **D. Agenda and organization of work**

6. Also at the 1st meeting, the Working Group adopted the provisional agenda, as contained in document [A/AC.278/2013/1](#). The agenda read as follows:

1. Election of officers.
2. Adoption of the agenda and other organizational matters.
3. Participation of non-governmental organizations in the work of the Open-ended Working Group on Ageing.
4. Existing international framework on the human rights of older persons and identification of existing gaps at the international level.
5. Other matters.
6. Provisional agenda for the next working session of the Open-ended Working Group on Ageing.
7. Adoption of the report.

7. At the same meeting, the Working Group approved the proposed organization of work for its fourth working session, as set out in an informal paper, in English only.

## **E. Participation of non-governmental organizations in the work of the Open-ended Working Group on Ageing**

8. Also at the 1st meeting, the Working Group decided to grant accreditation to the following non-governmental organizations to participate in its work:

American Psychiatric Association (United States of America)

Asociación Cartaginesa de Atención al Ciudadano de la Tercera Edad (Costa Rica)

Asociación Central de Funcionarios Públicos y Docentes Jubilados del Paraguay)

Association jeunesse pour la solidarité et le développement des parcelles assainies (Senegal)

National Guardianship Association (United States)

National Senior Citizen Federation (Nepal) Professionals for Humanity

Samaj Paribartan Kendra (Bangladesh)

Tashkent Public Information and Enlightening Center of the Youth “Istiqboli Avlod” (Uzbekistan)

Zimbabwe United Nations Association (Zimbabwe)

## **F. Documentation**

9. The list of documents before the Working Group at its fourth working session is available from: <http://social.un.org/ageing-working-group/fourthsession.shtml>.

## **II. Existing international framework on the human rights of older persons and identification of existing gaps at the international level**

10. The Working Group considered item 4 of its agenda at the 1st to 7th meetings, from 12 to 15 August 2013. It held a general discussion of the item at the 1st and 2nd meetings.

11. At the 1st meeting, the Working Group heard statements by the representatives of the European Union, Chile, Brazil, Japan, Argentina, Guatemala, Peru, India, Indonesia, Egypt, Slovenia, El Salvador, Turkey, Switzerland, Mexico, the Islamic Republic of Iran, South Africa, Malawi, the Russian Federation, the United States, Canada, Albania, Costa Rica and Germany.

12. At the 2nd meeting, statements were made by the representatives of Benin, the Dominican Republic, China, Colombia, Panama, Cuba, Bangladesh, Eritrea and Nepal.

13. At the same meeting, a statement was made by the representative of the International Labour Organization (ILO).

14. Also at the 2nd meeting, statements were made by the representatives of the following non-governmental organizations: International Network for the Prevention of Elder Abuse, Age UK, on behalf of the Global Alliance for the Rights of Older Persons, and Gray Panthers.

### **Expert panel discussion on “Promotion and protection of the human rights and dignity of older persons: contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing, 2002”**

15. At the 2nd meeting, on 12 August, the Working Group held a panel discussion on the topic “Promotion and protection of the human rights and dignity of older persons: contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing, 2002”, moderated by Tomas Milevičius from the Ministry of Social Security and Labour of Lithuania. Presentations were made by the following panellists: Markus Windegger, Ministry of Social Affairs and Consumer Protection, Austria; Chonvipat Changtrakul, Permanent Mission of Thailand to the United Nations; and Fernando Morales, National Commission on Ageing, Costa Rica.

16. The Working Group then held an interactive dialogue, during which the panellists responded to the comments and questions posed by the representatives of Argentina, France, Canada, Japan, New Zealand, Costa Rica and Sweden. The representatives of the following non-governmental organizations participated in the interactive dialogue: Asociación Cartaginesa de Atención al Ciudadano de la Tercera Edad, HelpAge International, Age Platform Europe, and Gray Panthers. Queen Mother Delois Blakely also participated.

### **Expert panel discussion on “Update on multilateral processes”**

17. At the 3rd meeting, on 13 August, the Working Group held a panel discussion on the topic “Update on multilateral processes”, moderated by Stelios Makriyiannis (Cyprus), Vice-Chair of the Working Group. Presentations were made by the

following panellists: Yeung Sik Yeun, Chief Justice and Commissioner, African Commission on Human and People's Rights (Mauritius); Nicola-Daniele Cangemi, Head of the Human Rights Law and Policy Division, Directorate General of Human Rights and Rule of Law, Council of Europe; Ana Marcela Pastorino, Chair, Working Group on the Human Rights of Older Persons, Organization of American States (Argentina).

18. The Working Group then held an interactive dialogue during which the panellists responded to the comments and questions posed by the representatives of Argentina, Chile, France, Burkina Faso, the Dominican Republic, Colombia and Costa Rica. The representatives of the following non-governmental organizations participated in the interactive dialogue: HelpAge International, World Network of Users and Survivors of Psychiatry, International Council on Social Welfare, International Federation on Ageing and National Association of Community Legal Centres (Australia).

19. The Moderator and the Chair made statements.

#### **Expert panel discussion on “Social security and the right to health”**

20. At the 4th meeting, on 13 August, the Working Group held a panel discussion on the topic “Social security and the right to health”, moderated by Emem Omokaro, Executive Director of Dave Omokaro Foundation, Nigeria. Presentations were made by the following panellists: Kasia Jurczak, Policy Analyst, European Commission; Kathy Foley, Member, Advisory Board of the Open Society Foundation; Hasmy bin Agam, Chair, Human Rights Commission, Malaysia; and Alejandro Bonilla-García, Director, Social Protection Department, Policy Portfolio, ILO.

21. The Working Group then held an interactive dialogue, during which the panellists responded to the comments and questions posed by the representatives of Costa Rica, the Netherlands, Argentina, Canada, Singapore, Israel, Thailand, Japan, Nicaragua, Sweden, El Salvador and Chile, as well as by the representative of the European Union. The representatives of the following non-governmental organizations also participated: National Alliance of Caregiving, HelpAge International, International Council on Social Welfare, ASCATE, Fédération de l'Âge d'Or du Québec (FADOQ), Australian National Association of Community Legal Centres, World Network of Users and Survivors of Psychiatry and Age UK, also on behalf of INPEA.

22. A statement was made by the Chair.

#### **Expert panel discussion on “Discrimination and access to work”**

23. At the 5th meeting, on 14 August, the Working Group held a panel discussion on “Discrimination and access to work”, moderated by Jill Adkins, Elder Rights Lawyer, Age Rights International. Presentations were made by the following panellists: Israel Doron, Head, Department of Gerontology, University of Haifa (Israel); Eilionóir Flynn, Senior Research Fellow, National University of Ireland; and Elizabeth Grossman, Regional Attorney, New York District Office, United States Equal Employment Opportunity Commission.

24. The Working Group then held an interactive dialogue, during which the panellists responded to the comments and questions posed by the representatives of Canada, Costa Rica, France, Albania, Israel and Argentina and the European Union.

The representatives of the following non-governmental organizations also participated: Age UK, ASCATE, National Association of Community Legal Centres (Australia), Associação Nacional Ministério Público Defesa Idosos e Pessoas com Deficiência, AGE Platform Europe, American Association of Retired Persons, HelpAge International, Gerontólogos Argentinos, and Réseau FADOQ.

25. Statements were made by the Moderator and the Chair.

#### **Presentations by the representatives of the Division for Social Policy and Development of the Department of Economic and Social Affairs and the Office of the United Nations High Commissioner for Human Rights**

26. At the 6th meeting, on 14 August, the Working Group heard a presentation by the representative of the Division for Social Policy and Development of the Department of Economic and Social Affairs on the main findings contained in a note verbale in follow-up to General Assembly resolution [67/139](#). A presentation was also made by the representative of the Office of the United Nations High Commissioner for Human Rights on the compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons.

#### **Interactive dialogue with civil society**

27. The Working Group held an interactive dialogue with civil society at its 6th and 7th meetings, on 14 and 15 August 2013.

28. At the 6th meeting, on 14 August, the interactive dialogue was moderated by Israel Doron. The representatives of El Salvador, Costa Rica, Chile, Albania, Colombia, Japan, Switzerland, Argentina, Australia, Mexico and the European Union made statements. The representatives of the following non-governmental organizations also made statements: AGE Platform Europe, Gray Panthers, HelpAge International, Dementia SA (South Africa), INPEA, Ageing Nepal, World Network of Users and Survivors of Psychiatry, National Association of Community Legal Centres (Australia), Alzheimer's Disease International, Federation for Ageing and Overall Dignity, American Bar Association, Gerontólogos Argentinos, International Council on Social Welfare, Age UK, International Association of Homes and Services for the Ageing (IAHSA), Council on the Ageing in Australia and International Association of Gerontology and Geriatrics (IAGG).

29. At the 7th meeting, on 15 August, the representatives of the following non-governmental organizations made statements: International Federation for Ageing; Generations United; AGE Platform Europe; IAGG; IAHSA; International Citizens United to Rehabilitate Elders (International CURE); International Longevity Centre Global Alliance; and INPEA.

#### **Discussion on the way forward**

30. At the 7th meeting, on 15 August, the Working Group held a discussion on the way forward, during which statements were made by the representatives of the United States, Argentina, Canada, Colombia, Japan, El Salvador, Albania, Switzerland, Brazil, Cuba, Peru, Chile, Costa Rica, the Netherlands and the European Union.

31. At the same meeting, the Chair made a statement regarding the provisional agenda for the next working session of the Working Group.

### **III. Chair's summary of the key points of the discussions**

32. At the 1st meeting, the Working Group agreed to include the Chair's summary of the key points of the panel discussions in the report on the session. The Chair's summary reads as follows:

#### **Introduction**

The General Assembly established the Open-ended Working Group on Ageing, pursuant to its resolution [65/182 \(2010\)](#), for the purpose of strengthening the protection of human rights of older persons by considering existing international frameworks and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.

The Working Group held its organizational meeting in 2011, which was followed by three working sessions with a focus on strengthening the protection of human rights of older persons in more detail. The working sessions consisted of interactive expert panel discussions aimed at examining the extent to which existing policies, policy provisions and practices and legislation adequately address the human rights of older persons. The issues deliberated included age discrimination; social exclusion; independent living and access to health care; social protection and the right to social security; violence and abuse; and access to justice. During the three working sessions, panel experts voiced concern over the inadequate attention and pace of action granted to older persons at both the national and international levels and made reference to limitations within existing human rights mechanisms.

In paragraph 1 of its resolution [67/139](#), the General Assembly decided that the Open-ended Working Group on Ageing should consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons, based on the holistic approach in the work carried out in the fields of social development, human rights and non-discrimination, as well as gender equality and the empowerment of women, and taking into account the inputs of the Human Rights Council, the reports of the Working Group and the recommendations of the Commission for Social Development and the Commission on the Status of Women, as well as the contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing. In paragraphs 2 and 4 of the resolution, the Assembly also requested the Working Group to present to it at the earliest possible date, a proposal containing, inter alia, the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons, which are not currently addressed sufficiently by existing mechanisms and therefore require further international protection; and requested the Secretary-General, with the support of the relevant United Nations entities, to submit to the Working Group by its fourth session and from within existing resources a compilation of existing international legal

instruments, documents and programmes that directly or indirectly address the situation of older persons, including those of conferences, summits, meetings or international or regional seminars convened by the United Nations and intergovernmental and non-governmental organizations.

## General overview

The proposed organization of work of the fourth session of the Open-ended Working Group on Ageing drew on the fourth preambular paragraph of resolution [67/139](#), on the outcomes of the global second review and appraisal of the Madrid International Plan of Action on Ageing and on consultation with regional groups to propose main topics for discussion.

The fourth working session consisted of five interactive expert panel discussions on (a) the promotion and protection of the human rights and dignity of older persons: contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing, 2002; (b) an update on multilateral regional standard-setting processes; (c) the rights to social security and to health; (d) discrimination and access to work; and (e) discussion of the main findings of the note verbale in the follow-up to resolution [67/139](#) and the compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons. In an unprecedented effort, the session dedicated a portion of its meetings to an interactive dialogue with civil society. This provided an opportunity for representatives of non-governmental organizations to interact with representatives of Member States and with their constituents, voice the concerns and interests of older persons and provide valuable interventions to discussions.

During the fourth working session, there was consensus among Member States of the shortcomings to the enjoyment of human rights by older persons, as well as broad agreement on the overall situation of the analysis of the human rights of older persons and the urgent need for improvement. There was also agreement about the urgent need to address these issues, as ageing has become a global phenomenon, manifested both in developed and developing countries. Member States expressed diverging views, though, on how to address these shortcomings.

In their general statements, several countries articulated the need for a legally binding instrument to promote and protect the rights and dignity of older persons and called for moving negotiations forward to discuss the main elements of an international convention for the human rights of older persons. Other Member States stated that existing international human rights instruments apply to older persons and that current deficiencies in the protection of the rights of older persons are the result of poor implementation, not normative gaps. Several countries highlighted age-related discriminatory practices that continued to exist despite current international legal instruments. They called for the full utilization of current international frameworks in addressing the issue of ageing and emphasized the importance of assessing current mechanisms of protection and reviewing existing gaps, so as to gradually build international consensus step by step. Additional proposals

towards strengthening the protection of human rights of older persons included revisiting and updating the United Nations Principles for Older Persons adopted by the General Assembly in 1991 to form “guiding principles”, as well as mainstreaming the rights of older persons within existing human rights frameworks and within the United Nations entities.

During the closing debate, an announcement was made on the formation of a cross-regional group of friends of older persons as human rights holders and actors of development. The Group of Friends aims at building on the discussions of the Working Group and transforming them into concrete actions. The Group intends to focus discussions on furthering the dignity and rights of older persons beyond the annual session of the Working Group by generating dialogue across the United Nations system, including with agencies and subsidiary bodies, among others. The Group of Friends is not a negotiating block and is open to all Member States sharing its objectives and priorities across regional groups.

The provisional agenda of the fifth working session of the Open-ended Working Group will be elaborated over the coming months by the Bureau and its constituents.

## **Summaries of expert panel discussions**

### **Panel 1**

#### **Promotion and protection of human rights and dignity of older persons: contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing, 2002**

(Moderated by Tomas Milevičius, Deputy Head of Family Policy Unit, Lithuanian Ministry of Social Security and Labour)

Markus Windegger, Federal Ministry of Labour, Social Affairs and Consumer Protection in Austria, reviewed the outcome of the regional meeting of the Economic Commission for Europe (ECE) on the second review and appraisal of the Madrid International Plan of Action on Ageing, which was held in Vienna in 2012. Mr. Windegger stated that 50 ECE member States had participated in the meeting and identified four major themes and future priority topics, namely: encouraging a longer working life and maintaining the ability to work; promoting the participation, non-discrimination and social inclusion of older persons; promoting and safeguarding dignity, health and independence in older age; and maintaining and enhancing intergenerational solidarity. The meeting resulted in the adoption of the Vienna Ministerial Declaration, which stresses the importance of regional cooperation and possibilities to share best national practices, and the importance of mainstreaming ageing and promoting active ageing within national policy processes.

Chonvipat Changtrakul, First Secretary at the Permanent Mission of Thailand to the United Nations made reference to the Asia-Pacific Intergovernmental Meeting on the Second Review and Appraisal of the Madrid International Plan of Action on Ageing, which was held in Bangkok in September 2012. Participating in the meeting were 30 members and associate members of the Economic and Social Commission for Asia and the Pacific



(ESCAP), representatives of civil society organizations and various United Nations system agencies. Ms. Changtrakul stated that the regional review meeting confirmed progress in implementing the Madrid International Plan of Action through developing national plans and mechanisms on ageing; strengthening social protection systems; engaging the active participation of older persons in policy formulation; and ensuring accessible, affordable and available health-care services. She noted challenges to the full implementation of the Plan of Action, including inadequate resources; difficulties in mainstreaming the gender dimensions of ageing; the marginalization of employment opportunities for older persons; uneven social protection coverage; inadequate investment in health care; and the lack of measures to address violence and abuse of older persons.

Fernando Morales, President of the Governing Board of the National Council for Older Persons and Director General of the National Hospital of Geriatrics and Gerontology in Costa Rica, and Academic Director of undergraduate and graduate geriatrics and gerontology at the University of Costa Rica discussed the outcomes of the third Intergovernmental Conference on Ageing in Latin America and the Caribbean, organized by the Economic Commission for Latin America and the Caribbean and held in San José in May 2012. The Conference highlighted demographic challenges within the region, including age, gender and ethnic discrimination; neglect, abuse and violence; access to health services; access to justice; social security; universal health care; the provision of care and homecare; and measures to strengthen legal structures for older persons. The meeting adopted the San José Charter on the Rights of Older Persons in Latin America and Caribbean, which supports the work of the Open-ended Working Group on Ageing towards improving the legal framework for older persons. Mr. Morales added that a follow-up meeting was held in 2013 and he urged Member States to accelerate the implementation of the San José Charter. He highlighted the main challenges, including restrictions to social security and health care and limited institutional capacity. Mr. Morales concluded by stating that existing instruments were insufficient to protect the rights of older persons and that the absence of a legally binding treaty for the human rights of older persons was an obstacle for the implementation of existing plans and related policies.

During the interactive dialogue, several Member States emphasized the need to fully utilize the Madrid International Plan of Action on Ageing by identifying and addressing implementation gaps. They highlighted the important role that the regional commissions could play in building national capacity and mainstreaming ageing issues. Civil society representatives noted that implementation gaps are attributable to the non-binding nature of the Madrid International Plan of Action. They further noted that the Plan of Action does not constitute a human rights framework, nor does it provide an independent monitoring system and a complaint procedure. Non-governmental organizations called for a paradigm shift to a rights-based approach through concrete proposals for a legally binding instrument. While some delegates underlined the importance of adopting an international convention on the rights of older persons, others reiterated that older persons are not a homogenous group, which therefore necessitates further research and analysis before moving towards the option of a legally binding instrument.

**Panel 2**  
**Update on multilateral processes**

(Moderated by Stelios Makriyiannis, Vice-Chair, Bureau of the Open-ended Working Group on Ageing)

Yeung Sik Yeun, Chief Justice in the Republic of Mauritius and Commissioner of the African Commission on Human and Peoples' Rights, presented a timeline marking notable events and important milestones to drafting a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. The Protocol sets down obligations and duties of States parties in promoting and protecting the rights of older persons. Mr. Yeung shared the guiding principles behind the draft Protocol, including the African Union Policy Framework and Plan of Action on Ageing (2002) and the declarations and standards set in relevant international and regional instruments. He elaborated on the specific situation in which several Member States were least developed countries and how that had resulted in adopting a holistic approach to producing a practical text that was workable and cost-effective. Mr. Yeung walked through the various chapters of the Protocol and emphasized that the African Union Conference of Ministers of Social Development had acknowledged the draft Protocol and had provided its political umbrella in support of the adoption of the draft Protocol at its third session in November 2012. Mr. Yeung concluded with a recommendation of Conference of Ministers of Social Development, which called for the advocacy and support of the elaboration of a United Nations convention on the human rights of older persons, which would strengthen and reinforce the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and to continue promoting the Madrid International Plan of Action on Ageing.

Nicola-Daniele Cangemi, Head of the Human Rights Law and Policy Division and Directorate General of Human Rights and Rule of Law at the Council of Europe, made reference to the European Convention on Human Rights, which includes some general provisions that directly or indirectly deal with issues relevant to older persons. He also made reference to the revised European Social Charter, which contains one of the few provisions in international treaties explicitly referring to older persons that make reference to the right to social protection. Mr. Cangemi emphasized numerous soft-law standards, as recommendations and resolutions of the Committee of Ministers and Parliamentary Assembly, promoting the rights of older persons and their social inclusion. Although soft law, Mr. Cangemi stated that these texts could be powerful as they are based on the consensus of 47 Governments in Europe. In addition, older persons receive protection indirectly through their inclusion in other vulnerable groups such as persons with disabilities. Mr. Cangemi made reference to a recommendation on the promotion of human rights of older persons, which was in its final drafting stage, providing specific guidance and practical examples based on good practices in the region. He clarified that non-binding and illustrative instruments were chosen to tackle this issue, because according to the Council of Europe members, existing human rights provisions already, explicitly or indirectly, protected the human rights of older persons, but suffered from an implementation gap, as regards older persons.

Ana Pastorino, alternate representative of Argentina to the Organization of American States, stated that ageing must be addressed as a human rights issue because it had important consequences in the design and implementation of public policies and the adoption of legislation. It was such consideration that led the American States to commit to working on incorporating ageing issues into public policy agendas and to examine the feasibility of preparing an inter-American convention on the rights of older persons. This resulted in a 2011 report highlighting the fact that not all the countries in the region had specific national legislation for seniors and that institutional arrangements varied significantly among countries. This demonstrated a lack of uniformity and standardization of the issue in the region. Ms. Pastorino stated that specific rules on the type of protection needed for older persons deserved to have a legally binding instrument that would safeguard their human rights in the context of the urgency imposed by progressive demographic changes. On this basis, formal negotiations of the draft Inter-American Convention on the Human Rights of Older Persons were launched. Ms. Pastorino introduced the various chapters of the draft and stated that while most of the text had received consensus, a few paragraphs remained pending. Ms. Pastorino concluded by stating that negotiations should be finalized shortly as the draft was to be presented for adoption at an Extraordinary General Assembly of the Organization, to be held in October 2013.

During the interactive dialogue, the nature and effect of non-binding instruments as recommendations, soft laws and guidelines to good practices, were raised by delegations, as was the effectiveness of follow-up mechanisms to ensure the accountability of such instruments. Discussions addressed the extent to which such recommendations contributed to guiding the adoption of legislation, which in turn was binding. The importance of reaffirming the full enjoyment of human rights of older persons as regards pension funds and social system costs was raised, especially as Member States engaged in discussions on the economic crisis. Some delegates emphasized the Madrid Plan of Action as a guiding principle and highlighted the need for promoting the existing rights of older persons, as well as the regularly updated best practices presented by the Council of Europe. Representatives of civil society organizations acknowledged the efforts of Member States to share good practices and the related knowledge, but noted that in essence, the picture of the second review and outcome of the Madrid Plan of Action was neither clear nor convincing, as not all Member States had submitted a review nor had actively participated in regional meetings. Representatives of non-governmental organizations stated that regionally adopted human rights instruments were insufficient and worked in isolation from each other and ran the risk of inconsistency in context and level of protection they afforded. Moreover, large areas of the world, such as Asia, were not properly covered by regional human rights arrangements. They emphasized that the development of regional and international instruments were not mutually exclusive; they were both crucial. Representatives of civil society organizations also stated that a new instrument should improve already existing standards in the Convention on the Rights of Persons with Disabilities regarding overlapping issues, such as legal capacity, the right to liberty and security and the right to live independently. Representatives of non-governmental organizations concluded with a call to break out of a mentality that accepted ageism and manifested in discrimination

and harassment, which in turn could lead to social isolation and neglect and feelings of sadness and betrayal.

### **Panel 3**

#### **Social security and the right to health**

(Moderated by Emem Omokaro, Executive Director, Dave Omokaro Foundation, Nigeria)

Kasia Jurczak, policy analyst of the European Commission Directorate General for Employment, Social Affairs and Inclusion pointed out that the European Commission had launched the Social Investment Package in February 2013. It provides guidance to Member States on how to adapt their social models to the challenges of demographic ageing and budgetary pressure on social policies with the view of maintaining accessible, quality and adequate but also sustainable social protection. Social investment is a policy framework that enables people to remain active and healthy and to live independent lives. The main objective of social investment is to prepare people to manage life's risks rather than addressing the consequences of these risks. Examples of social investment are investments in health and long-term care. The social investment approach puts emphasis on empowerment of older people who are holders of rights and on enabling people to live independently for as long as possible in a healthy and dignified manner. The social investment approach also acknowledges the important role of carers in combating elder abuse and the importance of monitoring of care services and takes an intergenerational perspective by avoiding conflict among generations as well as an intragenerational approach that acknowledges the differences of members of one generation.

Kathy Foley of the Open Society Foundation addressed the issue of palliative care and its importance for older persons. The General Assembly, during its High-level Meeting on the Prevention and Control of Non-communicable Diseases, in 2011, called for the integration of pain and palliative care into health-care services and for including palliative care indicators in policy planning. The WHO Public Health Model recommends a palliative care part in the national health plan, funding and service delivery models that support palliative care as well as the provision of essential medicines. The public should be educated about the importance of palliative care and an implementation strategy and standards should be carefully planned. Palliative care is not just a public health issue, but also a human rights issue. Palliative care rights should include pain relief; symptom control for other physical and psychological symptoms; essential drugs for palliative care; spiritual and bereavement care; communication for shared decision-making; access to legal services; and care by trained palliative care professionals. A convention on the rights of older persons could highlight the critical need for palliative care; define specific state obligations that would be legally binding; assure systematic monitoring; and improve the quality of care for older persons.

Hasmy bin Agam, Chair of the Human Rights Commission of Malaysia (SUHAKAM) shared the engagement of SUKAHAM in the protection and promotion of the rights of older persons. He spoke about the situation of older

persons in Malaysia, in particular the institutional framework consisting of the National Policy and Plan of Action for Older Persons of 2011, the National Health Policy for Older Persons of 2008 and the National Advisory and Consultative Council for Older Persons, which address the rights of older persons. While Malaysia had enacted an employment act, a minimum retirement age act, a domestic violence act and a care centre act, and various public forums and discussions had been organized on the rights of older persons, it lacked a comprehensive piece of legislation focused on older persons. While the discussion on the rights of older persons was gaining prominence at the regional and international levels, many issues relating to the lives of older persons in Malaysia still needed to be addressed. A current focus of SUHAKAM was the issue of care services and support for caregivers. In addition, the speaker pointed out that the social protection and retirement system for older persons was fragmented and that various Government agencies were involved in the delivery of services. The social security system was limited to the formal sector while the informal sector, including the self-employed, was excluded. Regarding health care, older persons received free and comprehensive health services and medicines in public hospitals and clinics and the outpatient registration fee at public hospitals/clinics was waived. There was a shortage of geriatric health-care professionals and workers and of formal and non-formal community care. SUHAKAM called for the inclusion of age as one of the grounds upon which discrimination was prohibited in the Federal Constitution and supported the drafting of a binding United Nations convention on the rights of older persons or alternatively, supported a regional (Association of Southeast Asian Nations) convention on the rights of older persons.

Alejandro Bonilla-García, Director of the Social Protection Department of the Policy Portfolio of ILO spoke about social protection. He stated that 60 per cent of all ILO agreements referred to social protection and that a minimum threshold or social protection floor had been established by the United Nations. The goal was that at no time during one's life should one be without social protection. The speaker pointed out that since large parts of the economy in developing countries were informal, old age in developing countries would be informal and therefore outside of any social protection frame. In addition, the current high unemployment of youth could lead to poor older persons in the future. A focus on education was essential in preventing poverty in old age. The resources of developing countries should be allocated in a more effective manner to social protection interventions. Mr. Bonilla-García recommended that strengthening social protection monitoring, increasing resources, improving communication and awareness of the importance of social protection, removing impediments to receive social protection, and developing a culture of social protection with a view to changing mindsets were important. ILO requested Member States to develop action plans and national capacity on social protection. In addition, employment systems and care systems for older persons should be elaborated. The ILO focused more on advice regarding social protection and recommended an intersectoral and integrated approach to demographic ageing.

During the interactive dialogue, the questions/observations centred on whether social protection and social investment amounted to rights. In

addition, the role that Governments, individuals and their families played in dealing with demographic ageing, income and social security as well as health was pondered. Whether ageing and older persons would lead to economic growth and the demand for new services or whether the costs would outweigh investments were also considered. Representatives from Member States and civil society organizations discussed comprehensive social policy approaches that addressed all members of society in comparison with such interventions that targeted older persons only, and asked for good national practices with regard to social protection, elder abuse, long-term care and dementia. Other issues raised included the cost of a convention on the rights of older persons and the advantages and disadvantages of a legally binding instrument. Panel members clarified that social protection was a right and that the number of persons who were not covered was increasing. They pointed to the cost-effectiveness of palliative care and the positive response to it in various countries and reported on the European experience that economies improved as a result of more services for older persons, on the importance of intergenerational solidarity in successfully addressing the concerns of older persons and on studies from the Organization for Economic Cooperation and Development on the cost of long-term care. Panellists also elaborated on the advantages of a dual approach to enhancing the rights of older persons by focusing on a regional legally binding instrument before approaching the issue at the international level.

#### **Panel 4**

##### **Discrimination and access to work**

(Moderated by Jill Adkins, Attorney at Henningson and Snoxell and Consultant at Age Rights International)

Israel Doron, Head of Department of Gerontology, University of Haifa, stated that age was generally not considered a forbidden ground of discrimination in existing international human rights instruments and that they did not include any mention of ageism, which in turn implied the need for interpretation in order to apply human rights to older persons. He clarified that while the concept of ageism was relatively new, the invisibility of older persons and their negative stereotype was old and deeply rooted in our societies. Mr. Doron asserted that there should be no doubt of the need for an international convention for the human rights of older persons in the light of clear and convincing normative and empirical evidence. He cited three examples of each, some of which had already been presented to the Working Group in previous sessions. Mr. Doron pointed out that arguments claiming there was only an implementation gap were not based on evidence but served to conceal a clear subtext, namely social justice. He clarified that “social justice” was a crucial element to deliberations on the rights of older persons, which had been missing from texts of previous sessions of the Working Group. Mr. Doron presented various types of social injustice based on Nancy Fraser’s classification, such as exploitation, marginalization and deprivation, in addition to cultural injustice exemplified by domination, non-recognition and disrespect. Mr. Doron affirmed that systematic stereotyping of and discrimination against people because they are old was just as prevalent as racism and sexism. He concluded that the current problem was neither an enforceability gap, implementation gap nor a legal construction gap, but rather

a social recognition justice gap, and that understanding this point revealed why the Madrid Plan of Action was insufficient, as it did not transform the social construction of old age. On the contrary, Mr. Doron concluded that it allowed governments to affirm their existing ignorance of the symbolic injustice older persons experienced in their daily lives.

Eilionóir Flynn, Senior Research Fellow, National University of Ireland addressed the issue of discrimination from the perspective of disability rights with a view to informing further discussion on how these lessons could be applied to the rights of older people and acknowledging that while there were important differences between the two communities, both sought access to the same universal human rights. Ms. Flynn stated that prior to the adoption of the Convention on the Rights of Persons with Disabilities, persons with disabilities, as was currently the case with older persons, were covered in general by universal international human rights norms, where protection against discrimination was guaranteed in these instruments under the category of “other status”. Despite efforts to advance the rights of persons with disabilities, review reports stated that this did not lead to more consistent protection of the human rights of persons with disabilities, that the term “rights” was rarely used in State reports in the context of disability and that inappropriate and outdated language was often used to describe persons with disabilities. Ms. Flynn stated that even after countries introduced anti-discrimination legislation, the impact beyond the employment sphere was often limited, as persons with disabilities continued to be discriminated against in laws that denied them the right to marry, to found a family, to vote and to have legal capacity. Ms. Flynn concluded that such reliance on inclusion under the generic term of “other status” had not, as exemplified from the experience of persons with disabilities, yielded positive results.

Elizabeth Grossman, Regional Attorney, New York District Office of the United States Equal Employment Opportunity Commission presented an overview of the Age Discrimination in Employment Act of 1967, which protects individuals who are 40 years of age or older from employment discrimination based on age. Ms. Grossman clarified that the law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, promotions, layoff and training, and stated that discharge was a very large issue for older persons. She clarified that age harassment, such as offensive remarks about a person’s age, is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision. Ms. Grossman stated that under the Act, it is unlawful to retaliate against an individual for opposing employment practices that discriminate based on age, or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the Act. She noted that the Older Workers Benefit Protection Act of 1990 amended the Act to specifically prohibit employers from denying benefits to older employees. The United States Congress recognized that the cost of providing certain benefits to older workers was greater than the cost of providing those same benefits to younger workers and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to

older workers was no less than the cost of providing benefits to younger workers. Ms. Grossman also stated that employment policies and practices that had an age-based disparate impact were permissible if based on reasonable factors other than age and that such provision was an affirmative defence that the employer must prove.

During the interactive dialogue, the Working Group plenary elaborated on the balance, within the employment context, between the right of not being discriminated against and the limited capacity of governments to administer various adjustments in provisions that govern access to work. It was highlighted that such a balance takes into account the concept of “reasonable accommodation”, whereby States provide incentives and support facilitative measures, as well as the concept of “progressive realization”, that assesses which measures are concrete and acceptable and which need further work. Delegates took the floor to present national plans, initiatives and good practices in combating discrimination of older persons at work. Some delegates quoted paragraphs from the general comment 6 of the Committee on Economic, Social and Cultural Rights, to support the argument that the absence of the explicit mentioning of “older persons” was not an intentional exclusion, but rather that demographic ageing was not a pressing issue at the time of the adoption of the Covenant and that the provision on discrimination could be interpreted as applying to age. Delegates stated that the real challenge was that Member States fell short on implementing all human rights to all members of society and that programme and policy development and evaluation was the way forward.

Other delegates made reference to a 2006 statement of the High Commissioner for Human Rights, which acknowledged a proliferation of instruments on human rights, which were only six at the time. To date, there are nine core human rights instruments and 10 treaty bodies for monitoring. The need to fully explore options within existing mechanisms and focus on implementing existing documents was highlighted. Although non-binding, some delegates stated that the Madrid International Plan of Action on Ageing had been endorsed by 156 Member States, lending it universality, and that a new norms-setting process was therefore not required, but rather policies, measures and actions to improve and strengthen the implementation of the Plan. In response, panel members clarified that in the absence of a specific and unique convention, there continued to be an absence or lack of understanding and knowledge of ageism as a social phenomenon in many national legal systems, as was the case with mandatory retirement policies. They emphasized that in any plan of action, there would always be implementation gaps and that the Madrid Plan of Action could only ever have a limited impact because it did not have a legally binding mandate. They suggested a more precise question to be addressed, which was to what extent did existing legal instruments sufficiently address the unique legal rights of older persons. Interventions from civil society representatives brought the discussion back to national realities by providing facts and figures on age discrimination. They coined the term “the big three: social security, health and housing” as rights that were essential to older people and were not negotiable since they represented the bare necessities of life. Non-governmental organizations inquired about the hesitance of Member States at reiterating and clarifying the human rights of



older persons in a consolidated form, when Governments already had such obligations as signatories to existing human rights instruments.

#### **Panel 5**

#### **Main findings of: (a) note verbale in follow-up to General Assembly resolution 67/139; and (b) the compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons**

Rosemary Lane, United Nations Focal Point on Ageing, spoke about the responses to the note verbale sent by the Secretariat to Member States and the United Nations system and the call for input that was sent to non-governmental organizations. A total of 31 Member States, 36 civil society organizations and 4 organizations of the United Nations system responded to the inquiry. The following general principles of a possible international legal instrument on the rights of older persons were sent to the Secretariat: dignity; independence; autonomy; equity; gender equality; non-discrimination; accessibility; empowerment; self-realization; intergenerational solidarity; respect for diversity and difference; and participation and integration. With regard to the economic empowerment of older persons, the following were mentioned: the right to an adequate standard of living, including food, water, housing and clothing; the right to access to work; the right to social protection, financial security and social assistance; the right to access to credit, establishment of business, income-generating activities and ownership of property; and the right to education and training. In the area of social and civic participation, the following were listed: the right to accessibility; the right to information; the right to legal services, judicial protection and equality before the law; the right to public and political life; the right to social and cultural life/recreation and sport; and the right to freedom of association. Concerning health, the following were mentioned: the right to access care and long-term care; the right to health care and mental health; the right to vital drugs and the right to social services were singled out. With regard to dignity, the right to respect for privacy; the right to freedom from abuse and violence; the right to physical security; and the right to end of life, to life and dignified death. Concerning diversity, the rights of subgroups, such as indigenous people, prisoners, disabled older persons, older women and migrants were singled out.

Christian Curtis, Human Rights Officer of the Human Rights and Economic and Social Issues Section of the Office of United Nations the High Commissioner for Human Rights reported on the elaboration of the compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons. He referred to document [A/AC.278/2013/CRP.1](#), which was posted on the website of the fourth session of the Open-ended Working Group on Ageing. He shared the criteria used to identify and classify the relevant instruments and documents, as the language used in paragraph 4 of resolution 67/139 was very broad. Among these criteria, attention was devoted to separating the binding and non-binding instruments and to pointing out the diverse nature of non-binding documents. Other distinctions included the source of the document — whether it was issued by a human rights body — and its universal or regional character.

During the interactive dialogue with civil society, representatives of non-governmental organizations expressed support for a convention on the rights of older persons and underlined the importance of the general principles and specific rights that were mentioned in their written statements to the Working Group. The advantages of a convention would be to raise awareness with regard to the situation of older persons, to clarify the rights of older persons and to provide a comprehensive framework of all rights, to prohibit age discrimination and to provide a monitoring mechanism that would remedy the lack of action with regard to protecting older persons. Representatives of non-governmental organizations mentioned issues of particular concern that should be addressed in a convention, namely: dementia; palliative care and pain management; the participation and engagement of older persons; economic security and social protection; housing; health; long-term care; freedom from physical and financial abuse; older persons in emergency situations; and guardianship. The fact that the Madrid International Plan of Action on Ageing is not legally binding was seen as an impediment to the full enjoyment of all rights by older persons. Some Member States expressed their support for a convention, owing to the fact that previous legal instruments effectively addressed the gaps in rights of particular social groups and that the existing system did not function sufficiently. Regional instruments, such as the San José Charter could serve as guidelines for a possible convention. Other Member States stated that while protection and implementation gaps existed, they were not of a normative nature. In addition, existing legal instruments covered the rights of older persons already and there was no consensus among Member States on a convention. However, the development of indicators on the well-being of older persons would be helpful. Support for a special rapporteur on the rights of older persons was mentioned by some Member States.

### **Discussions on the way forward**

(Moderated by the Chair)

Delegates extended their thanks to the Chair, members of the Bureau and the secretariat for organizing the fourth session of the Open-ended Working Group. They commended the moderators and panellists for the informative and provocative sessions and thanked the representatives of civil society for their contributions and active engagement that substantively enriched the work of the Group.

During discussions on the way forward, a number of delegates stated that universal human rights applied to older persons, but were not systematically or adequately adhered to. They argued that the problem was one of implementation and that whether a new convention would be the most effective way to close the implementation gap was still in question.

Some Member States addressed General Assembly resolution [67/139](#) entitled “Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons”, and argued that its recorded vote of 54 in favour to 5 against, with 118 abstentions, attested to the lack of a common position on a new United Nations convention on the rights of older persons.

Delegates opposed to a new norm-setting process recommended a number of proposals to encourage implementation, including exploring ways to create accountability for violations and abuses of existing rights; to leverage United Nations entities, including the specialized agencies, funds and programmes, to improve the lives of older persons; and to identify gaps between existing frameworks and the actual challenges faced by older persons, taking into account the outcome of the second global review and appraisal of the Madrid International Plan of Action. They concluded that such proposals were less resource intensive and rallied greater support and consensus.

Other Member States highlighted the need to address the rights of older persons without further delay as they represented a large and growing segment of the population. Delegates made reference to reports and studies of the United Nations High Commissioner for Human Rights submitted to the Economic and Social Council that stated that current arrangements at the national and international levels to protect the human rights of older persons were inadequate and cited nine main areas where protection gaps relevant to older persons were identified.

Some Member States called for taking concrete measures through negotiating the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons, which were not currently addressed sufficiently by existing mechanisms, as requested in resolution 67/139. They argued that despite the large number of abstentions in the voting, resolution 67/139 was approved according to the rules of the General Assembly and that a number of States that had abstained at the time of its adoption continued to be committed to promoting and protecting the dignity and rights of older persons.

Other delegates noted that negotiating a new convention did not necessitate universal consensus, making reference to such international instruments as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, which were not adopted with support from all Member States. Delegates argued that if a new convention was not universal, it did not mean that it was not valid.

Some Member States noted that proposals presented on the way forward were not mutually exclusive, but rather complementary. They noted that efforts to mainstream the rights of older persons as cross-cutting issues within the programmes of the United Nations entities without upgrading them would lead to a dilution of these rights. Delegates used the example of gender as a cross-cutting issue, which would have not been a feasible option without the Convention on the Elimination of All Forms of Discrimination against Women.

During the closing debate, Argentina announced the formation of a cross-regional group of friends of older persons, as human rights holders and actors of development. It aims at building on discussions of the Working Group and transforming them into concrete actions. The Group of Friends also intends to focus discussions to further the dignity and rights of older persons beyond the annual session of the Working Group by generating dialogue across the United Nations system, including with agencies and subsidiary bodies, among others. Delegates emphasized that the Group of Friends was not a

negotiating block and was open to all Member States sharing its objectives and priorities across all regional groups.

Representatives of non-governmental organizations emphasized that a comprehensive legal framework for the rights of older persons was needed to avoid inequality, charity and welfare approaches and reduced standards of protection for older persons in the future. They appealed to the Chair to consider requesting, in the upcoming resolution, more suitable dates within the United Nations calendar to convene future sessions of the Working Group in order to allow for more dynamic participation. They recommended utilizing more accessible technology, such as Skype, to allow for interaction with additional international non-governmental organizations that are unable to send representatives.

### **Closing remarks by the Chair**

In his closing remarks, the Chair made reference to the general debate, in which Member States and civil society representatives had contributed their views on the protection of the human rights of older persons, making reference to international, regional and national examples.

From that debate, the Chair highlighted two fundamental aspects where consensus had been made: first, the unprecedented demographic challenges throughout the world, which indicate that as never before, older persons are and will be visible and present in our societies. The Chair noted that such demographic changes would entail challenges for governments and societies. Secondly, the Chair noted that there was a consensus that mechanisms to ensure the full enjoyment of older persons of their civil, political, social, economic and cultural rights were insufficient and inadequate, because the mistreatment, exclusion, stigmatization, indifference, discrimination and unmet basic needs of older persons remained a reality. The Chair stated that supporting a model of active ageing also implied collectively allowing older persons to fully exercise and demand respect for their rights. He emphasized that the cultural changes contributing to the processes of social inclusion had been accompanied by a different legal framework, in which older persons were more knowledgeable of the fact that their inclusion as active persons in society was subject neither to government changes nor to economic crises.

The Chair noted that in his view, the above consensus implied that the international community was assuming a new social contract that would respond to the need for greater international protection of the rights of older persons. To achieve that goal, the Chair stated that the expert panellists, delegates and civil society representatives had proposed various mechanisms.

For several Member States and some panellists, greater protection could be achieved through a better and more effective implementation of existing instruments and mechanisms, including action plans adopted at the international level, such as the Madrid International Plan of Action on Ageing. For the majority of the Member States, civil society organizations and the panellists in attendance, the Chair noted that there was agreement on the need for an international legal instrument that would address all the human rights of older persons and allow them to fully and actively contribute to and participate in their societies, and that would combat stereotypes, discrimination, indifference and abuse.

The Chair presented brief comments on the main topics discussed in the panel sessions and made reference to the mandate of the Open-ended Working Group, which he stated had been reviewed at the highest level of the United Nations; the General Assembly. He noted that this review had resulted in the addition of tasks to the original mandate of the Working Group and that the fourth working session had implemented some of those requests through the timely submission of reports contributing to the deliberations of the Group.

The Chair made reference to the interactive dialogue with the civil society organizations present at the meeting and noted the greater number of representatives from European and North American organizations in comparison with other regions. The Chair called for efforts aimed at including civil society organizations from all over the world, especially less developed countries in the process of the Open-ended Working Group on Ageing. The Chair made reference to the practice during the Convention on the Rights of Persons with Disabilities and invited Member States to include, in their delegations to the Working Group, members of civil society organizations in their countries and regions.

The Chair noted that the fourth session of the Open-ended Working Group on Ageing brought the negotiations back to the need to reach agreement on the various proposals presented at the session, including the possibility of appointing a special rapporteur of the Human Rights Council on the rights of older persons; raising awareness; sharing developments across regions; and enhancing partnerships with civil society organizations and including them in national delegations. The Chair also made reference to establishment of the Group of Friends of Older Persons that was announced by delegates during the session and how the Group aims to carry on working continuously and in between sessions to strengthen the awareness and protection of the rights of older persons. He also noted proposals to mainstream ageing issues throughout the United Nations system and at the national level, as well as proposals to consider updating the United Nations Principles for Older Persons so as to present new guiding principles.

The Chair also made reference to proposals to prepare the main elements that should bring together an international legal instrument to promote and protect the rights and dignity of older people, as requested in resolution [67/139](#). He noted that the abstentions on the voting record of resolution [67/139](#) should not be viewed as an obstacle, but rather an opportunity. The Chair noted that the number of abstentions reflects the fact that additional time and deliberations are needed to build agreement towards considering a new international instrument. He also noted that the active participation within the fourth session of many delegations that had abstained in voting for the resolution demonstrates a strong commitment to the protection of older persons nationally and internationally. The Chair noted that while there were different approaches and elements for achieving this goal, they were all nevertheless valid and should be further analysed and discussed.

#### **IV. Adoption of the report on the organizational session**

33. At the 7th meeting, on 15 August, the Working Group adopted the draft report on its fourth working session ([A/AC.278/2013/L.1](#)).