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Follow-up to resolution 76/138: measures to enhance the promotion and protection of the human rights and dignity of older persons: best practices, lessons learned, possible content for a multilateral legal instrument and identification of areas and issues where further protection and action are needed

Substantive inputs in the form of normative content for the development of a possible international standard on the focus areas “right to work and access to the labour market” and “access to justice” *

Working document submitted by the Office of the High Commissioner for Human Rights (OHCHR)

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I. Introduction

1. The open-ended working group, established by the General Assembly through its resolution 65/182 with the purpose of strengthening the protection for the human rights of older persons, will hold its twelfth session at the United Nations Headquarters from 11 to 14 April 2022. Under item 6 of the provisional agenda, the Working Group will discuss follow-up to General Assembly resolution 76/138: measures to enhance the promotion and protection of the human rights and dignity of older persons: best practices, lessons learned, possible content for a multilateral legal instrument and identification of areas and issues where further protection and action are needed. To that end, the Chair of the Open-ended Working Group called for inputs from Member States, national human rights institutions with A-status, non-governmental organizations and United Nations system agencies and bodies, following questionnaires prepared by the Secretariat on the two focus areas that were discussed at the eleventh session: the right to work and access to the labour market; and access to justice.
2. The present document contains an analytical summary of contributions received. The document also benefitted from the working documents submitted to the eleventh session summarizing substantive inputs on the focus area of “Right to work and access to the labour market”¹ and “Access to justice”.²

II. The right to work and access to the labour market

A. Conceptual basis

3. The right to work and access to the labour market is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. It is stipulated in article 6 of the International Covenant on Economic, Social and Cultural Rights as including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to achieve the full realization of this right include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.³
4. The Independent Expert on the Enjoyment of all Human Rights by Older Persons (the Independent Expert) noted in her report that participation in the labour market enhances self-esteem, social inclusion, and financial security, and stressed that older workers should enjoy equality of opportunity and treatment in relation to all aspects of work and conditions of employment in all sectors.⁴
5. Substantive and normative descriptions of the right to work and access to the labour market incorporate manifold areas including, the right to choose and qualify for

¹ A/AC.278/2020/3

² A/AC.278/2021/4.

³ International Covenant on Economic, Social and Cultural Rights, art. 6; Committee on Economic, Social and Cultural Rights, General Comment No.18, The right to work, E/C.12/GC/186 February 2006, para. 1.

⁴ A/HRC/33/44, para. 58.

employment; obtain qualifications; just and favourable conditions of work; protections against unemployment, under-employment, and unfair or arbitrary termination; training and education; protection against discrimination (on age and other grounds); membership of trade and labour unions and professional associations; workplace and occupational safety and health; access to work injury compensation; and retirement.

B. Definitions

6. International instruments, recommendations and principles describing the right to work and access to the labour market include general,⁵ thematic,⁶ labour-specific,⁷ and older person-specific,⁸ as well as treaty body general comments.⁹ The United Nations Principles for Older Persons link opportunity of older persons to work or to have access to other income-generating opportunities to their independence.¹⁰ Normative elements of the right to work for older persons are set out in a comprehensive submissions of the International Labour Organization (ILO).¹¹ One older person-specific standard, the non-binding ILO Older Workers Recommendation, 1980 (No. 162) provides expert guidance for workers who are liable to encounter difficulties in employment and occupation because of advancement in age, and recommends that older persons should enjoy equality of opportunity and treatment with other workers in several areas.
7. Regional instruments provide older person-specific standards. The Inter-American Convention on Protecting the Human Rights of Older Persons (the Inter-American Convention) describes the scope of the right to work for older persons.¹² Article 18 includes rights to dignified and decent work; equal opportunity and treatment; prevention of labour discrimination; guarantees, benefits, labour and union rights, and pay; promotion of formal work and regulation of self-employment and domestic work; prevention of abuse and adequate social coverage, and recognition for unremunerated work; programs and measures that facilitate gradual transition into retirement; labour policies that take account of the needs and characteristics of older persons, with the aim of fostering workplaces with suitable working conditions, environment, work hours, and organization of tasks; and training and knowledge-

⁵ Universal Declaration of Human Rights, arts. 23-24; International Covenant on Economic, Social and Cultural Rights, arts. 6-7.

⁶ See Convention on the Elimination of All Forms of Racial Discrimination, art. 5e(i); Convention on the Elimination of All Forms of Discrimination against Women, art.11; Convention on the Rights of the Child, art. 32; and Convention on the Rights of Persons with Disabilities, art. 27; Declaration on the Rights of Indigenous Peoples, arts. 3, 5, 17, 20, 21; Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 13, 14, 16.

⁷ International Labour Organization (ILO) Centenary Declaration for the Future of Work; ILO Recommendation 131 (1967); Recommendation 162 (1980); and Recommendation 166 (1982).

⁸ United Nations Principles for Older Persons, para. 2; ILO Older Workers Recommendation, 1980 (No. 162).

⁹ Committee on Economic, Social and Cultural Rights, General Comment No.6, The economic, social and cultural rights of older persons, E/1996/22, annex IV; Committee on Economic, Social and Cultural Rights, General Comment No.18, The right to work, E/C.12/GC/186 February 2006; Committee on Economic, Social and Cultural Rights, General Comment No.23(2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, paras. 5, 31, 47 and 56 in respect of older persons.

¹⁰ United Nations Principles for Older Persons at principles 2, 3, 18.

¹¹ ILO input to the Twelfth Session of the UNGA Open-ended Working Group on Ageing: Background Information Document, 22/2/2022.

¹² Inter-American Convention, art. 18.

certification programs to promote access for older persons to more-inclusive labour markets.

8. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (the African Protocol) provides a less expansive standard. Article 6 provides the right to protection against discrimination in employment, including measures against discrimination and ensuring appropriate work opportunities for older persons.
9. The Independent Expert has observed that a lack of work can lead to social exclusion and isolation,¹³ and noted that specific practices, attitudes and frameworks affecting the participation of older persons need to be analysed to design measures to prevent discrimination and effectively address barriers to older persons' participation in the workforce.¹⁴
10. No examples of comprehensive national laws specifically protecting older persons' right to work and access to the labour market were found in the submissions received. Examples of national laws included Mexico's Older Persons' Rights Law and the Dominican Republic's Law on Protection of the Aging Person, both of which describe older persons' right to work as part of a broader legislative scheme. Jordan and Kenya indicated in their submissions the inclusion of older persons' work within national strategies. In its response the Kenya National Commission on Human Rights noted the right should ensure equitable distribution of opportunities to enable older persons attain secure and sustainable livelihoods through freely chosen productive employment and work without any age-based discrimination.
11. Overall, inputs suggested standards should recognize that older persons are not homogeneous, each having different functional capacities, abilities, skills, experience, and expertise. Age Platform Europe stated that the right to work merits a comprehensive, life course approach, addressing employer, worker, and wider societal barriers to full enjoyment of the right, and extending to all sectors, and that critical components include the principles of equality, non-discrimination, autonomy, choice, inclusion, participation, and remedy.

C. Normative elements of the right to work and access to the labour market for older persons

Employment-related discrimination against older persons

12. International instruments and recommendations include general,¹⁵ labour-specific,¹⁶ and older person-specific¹⁷ prohibitions against discrimination in employment. Article 6 of the International Covenant on Economic, Social and Cultural Rights contains a non-discrimination provision, although it does not specify 'age' as a ground. ILO Convention 111 includes general provisions on non-

¹³ A/HRC/39/50, para. 20.

¹⁴ A/HRC/33/44, para. 58.

¹⁵ International Covenant on Economic, Social and Cultural Rights protects the right to work, art. 6.

¹⁶ ILO Convention on Discrimination in Employment and Occupation of 1958 (No. 111); ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No.168).

¹⁷ ILO Older Workers Recommendation, 1980 (No. 162).

discrimination, and promotion of specialist programs,¹⁸ and while age is not a specified prohibited ground, it can be added by States on their own motion. Additionally, ILO Recommendation 162 sets out non-binding, older person specific standards of equality of opportunity and treatment, protection measures, and preparation for and access to retirement.¹⁹

13. Regional instruments provide older person specific standards prohibiting labour,²⁰ age,²¹ and other forms²² of discrimination, including prohibitions on unequal treatment and against distinctions not based on specific (occupational) requirements.²³ The 2014 Council of Europe Recommendation promotes adoption of age discrimination legislation in the labour market.²⁴
14. The World Health Organization (WHO) in its submission to the eleventh session of the Working Group reported on the positive effects of age discrimination laws in addressing ageism,²⁵ including higher participation of all individuals in employment and education, and narrowing of the pay gap between protected groups and the general population.²⁶ The Global Report on Ageism noted that ageism intersects with other forms of structural inequality including sexism, ableism and racism.²⁷ The ILO's input suggested that standards should refer to 'discrimination, violence and harassment', and to the broader term 'in the world of work', thereby ensuring the inclusion of formal work, informal work, unemployment and those inactive. On the issue of who is an older worker, inputs noted examples that ranged from 45 to 75 years, including standards and programmes preparing workers as they age, and for work in older age. In contrast, Aging Nepal noted national laws that define a person over 60 as unemployed.
15. Submissions from a number of States including Kenya, Armenia, Spain, Slovenia, Italy and the national human rights institutions in Finland and Serbia noted the existence of constitutional guarantees against age discrimination and creating labour rights. Kenya noted the interaction between labour relations rights and the rights of older persons to participate in society and pursue personal development. Many States including Cyprus, Israel, Mauritius and Germany described national equality laws that include age as a protected attribute. Inputs noted various prohibited conduct; the Serbian Protector of Citizens described laws prescribing severe forms of discrimination: encouraging and fostering inequality, hatred, and intolerance. Globally, inputs revealed fragmented, inconsistent, and generally weak systems of protection against discrimination. Gaps in age discrimination protections were raised by NGOs including Age Platform Europe. Overall, inputs recommended standards include protection against direct, indirect, intersectional, and cumulative discrimination based on age and ageing alone, and in combination with other grounds. Inputs suggested specific areas of prohibition: recruitment; pay

¹⁸ ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No.168), arts. 6, 8 respectively.

¹⁹ ILO Older Workers Recommendation, 1980 (No. 162), para. 3-10, 11-19, 20-30, 31-33 respectively.

²⁰ Inter-American Convention, art. 18, African Protocol, art. 6.

²¹ Ibid., art. 3.

²² Ibid.

²³ Ibid., art. 6.

²⁴ Council of Europe, Promotion of Human Rights of Older Persons, Recommendation CM/Rec(2014)2.

²⁵ Global report on ageism. Geneva: World Health Organization; 2021, p.96.

²⁶ Ibid., p.96.

²⁷ Ibid., p.xv and pp.82-83.

and conditions; choice of candidates for performing a specific job; placement, transfer, or promotion; access to education, vocational training, and specialization; termination; retirement; maximum age limits and retirement ages (including gendered aspects) or age proxies; forced labour; and association and union membership. Many submissions raised concern about the extent of limitations and exceptions to prohibitions on the basis they potentially excuse unacceptable discrimination.

16. Among many others, Austria and Italy in their submissions noted the importance of specific measures to address gender disparity in work and pension levels. Overall, inputs suggested specific protections for groups including older women, older persons with intersecting grounds, older persons in fragile settings, or experiencing labour market transition. Intersecting status was highlighted as an important source of different experience for older women in the labour market, including lower labour force participation rates, lower earnings, and lower pension benefits, and particularly so according to the women's ethnic origin or race.

Elimination of ageism and age discrimination from the workplace and organizational cultures

17. International and regional instruments address the elimination of age discrimination from the workplace;²⁸ however, they do not specifically prohibit or seek to eliminate ageism in work. Submissions from States, such as Argentina, suggested the Inter-American Convention may implicitly address ageism by creating a new positive paradigm around old age.
18. The WHO's submission to the eleventh session of the Working Group reported that ageism is pervasive within workplaces, and manifests itself in terms of pay and benefits; in health problems; by reducing older persons' commitment to the organization; by occurring throughout the work cycle: during recruitment, employability, employment, dismissal and retirement processes; by impacting on career advancement, performance appraisals and evaluations of interpersonal skills; appearing in workplace reduction measures; in access to training; and by causing premature retirement.²⁹ Ageist attitudes include beliefs that older workers are harder to train, and are less interested in challenging jobs.³⁰ The Independent Expert also noted the importance of changing employers' attitudes towards older workers and raising awareness of the business benefits of hiring older workers; suggesting that measures might encourage recruitment and retention of older workers through financial and technical assistance, and in auxiliary roles within public services.³¹
19. States including Belarus and Cuba cited national laws that did not entrench compulsory retirement age. Many inputs noted mandatory or semi-mandatory retirement ages, including from 55 years. The Guatemala Human Rights Ombudsman indicated that while age may not be basis for forced retirement, health conditions associated with aging may be a proxy. Inputs from NGOs such as Age Platform Europe noted that practices such as mandatory or statutory retirement ages

²⁸ Inter-American Convention, art. 18, African Protocol, art. 6.

²⁹ Global report on ageism. Geneva: World Health Organization; 2021.

³⁰ Ibid., , pp.26-27.

³¹ A/HRC/33/44, para. 60.

or fixed chronological age boundaries required standards that prohibit institutional and structural ageism beyond individual discrimination. The Independent Expert previously noted mandatory retirement ages and age discrimination in recruitment prevent older persons from finding jobs and continuing to work and may further social exclusion.³² The Office of the Commissioner for the Human Rights of Poland emphasised the importance of standards that address ageism by eliminating stereotypes and prejudice against older persons in work.

Reasonable accommodation to older persons in the workplace

20. International instruments require provision of reasonable accommodations for older persons with disabilities.³³ Reasonable accommodations are defined in the Convention on the Rights of Persons with Disabilities (CRPD) as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”³⁴ International instruments and regional instruments do not specifically require provision of reasonable accommodations for older persons in the workplace.
21. Reasonable accommodations for age aim to neutralize the disadvantages that may come with age, value the age culture, and challenge the narrow approach of public policies on age.³⁵ The Independent Expert previously noted that possible accommodations for older persons with reduced work ability can be created by an enabling environment, including transportation support, work-related rehabilitation, mobile and experience-based counselling.³⁶
22. Many inputs highlighted the CRPD’s application to older persons with disabilities, but also that examples of reasonable accommodations for older persons with disabilities are scarce. The Serbian Protector of Citizens noted national discrimination laws that oblige employers to take appropriate measures, if necessary in a particular case, in order to ensure access, reasonably adapted workplace, participation, professional development and advancement in the work of employees who are in an unequal position in relation to other employees, and in particular, among others, for older persons unless these measures would impose a disproportionate burden on the employer. However, the Protector also noted this did not go as far as legally requiring reasonable accommodations in the manner of the CRPD.
23. Austria noted a practical example where full-time or part-time care-leave (*Pflegekarenz* or *Pflegezeit*) was available for periods of one to three months. They also noted the availability of leave for hospice care around end of life. Similarly, the Russian Federation noted arrangements whereby additional unpaid leave was available to older workers. Germany suggested accommodations might include age-appropriate occupational safety and health arrangements and workplace

³² A/HRC/39/50, para. 60.

³³ Convention on the Rights of Persons with Disabilities, art. 2.

³⁴ Ibid.

³⁵ Kaya, R. (2020). Reasonable Accommodation for Age. *Canadian Journal of Law & Jurisprudence*, 33(1), 115-143. doi:10.1017/cjlj.2019.33

³⁶ A/HRC/33/44, para. 61.

health management targeted at older persons. Kenya highlighted its National Plan of Action on Older Persons and Ageing, which promotes a favourable environment that enables older persons to participate actively in the formal and informal sectors of employment. Slovenia described its Employment Relationships Act that offered specific examples of part time pay in retirement and prohibitions against overtime or night time work without consent. Workplace specific examples were given including by NGO Dis-Moi (Droits Humains Ocean Indien) that noted the need for appropriate on-site living and sleeping quarters.

24. Taken collectively, inputs recommended that reasonable accommodations for older persons include assistive technology and support (including human resources); organizational flexibility; employee flexibility; flexible work and work arrangements. Inputs also recommended that standards recognize demands based on all forms of ‘age’ including chronological, functional, biological and psychological.³⁷ Inputs noted that standards should include reasonable accommodations about care arrangements; physical accessibility (mobility, ergonomics, adaptive equipment, mechanical devices); supporting mental wellbeing; age-related health limitations (cognitive, motor, sensory); temporal adjustments (schedules, shifts, hours, start and finish times, breaks); productivity-based measures (targets, outputs); activity-based work; and dynamic measures (role and skill set changes).
25. Inputs suggested standards should express rationales for reasonable accommodations, which include serving to enhance career opportunities by increasing job retention, improving job performance, and extending job tenure. Submissions noted that reasonable accommodations should help level the playing field, enable older persons to be more competitive, and facilitate advancement opportunities. Inputs submitted that reasonable accommodations should strengthen ties with co-workers, enhance promotion opportunities, and reduce stress, burnout, and early retirement. Inputs noted the specific work needs of older persons, including privacy and quiet work environments, and optimized settings. Alzheimer’s Disease International provided specific guidance that for older persons with dementia, reasonable accommodations could help to facilitate longevity in work, thereby promoting independence, the maintenance of relationships with colleagues, and improve overall wellbeing.

Affirmative action to promote the hiring of older persons

26. International instruments and recommendations include labour,³⁸ and older person-specific³⁹ provisions for the application of special measures or special protection for older persons without significant elaboration. Regional instruments refer to affirmative action for older persons in general terms,⁴⁰ and by textual implication.⁴¹ The Independent Expert previously noted the need to promote ongoing research on incentives and conducive environments that would allow older persons to extend

³⁷ Kaya, R. (2020). Reasonable Accommodation for Age. *Canadian Journal of Law & Jurisprudence*, 33(1), 115-143 at 126. doi:10.1017/cjlj.2019.

³⁸ ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No.168), arts. 6,8; ILO Convention on Discrimination in Employment and Occupation of 1958 (No. 111), art. 5.

³⁹ ILO Older Workers Recommendation, 1980 (No. 162), paras. 5, 10, 18, 19.

⁴⁰ Inter-American Convention, art. 4, African Protocol, art. 3.

⁴¹ Inter-American Convention, art. 18, African Protocol, art. 6.

their working lives beyond the pensionable age and to assess the changes that need to be made in regulations, taxes, training, and company environments to promote the right of older persons to work.⁴²

27. Many submissions supported the promotion of affirmative action programs. States including Cyprus and Germany noted that under equality laws, differential treatment is not discriminatory if it is objectively and reasonably justified by legitimate aims, including employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. Suggested standards would include bases for affirmative action including access to employment and vocational training, fixing of minimum conditions of age, professional experience, seniority in service for access to employment, or to certain advantages linked to employment and minimum age requirements.
28. State submissions, including from Czechia and Italy, highlighted existing programs for older persons involving wage and asset subsidies, job placement and case management. States also noted programmes preparing workers who are aging. France, for instance, described professionalization contracts available from 45 years, whereas Germany and Serbia noted access to wage subsidies and programmes from 50 years. States including Israel and the Dominican Republic noted civil service programmes that include dedicated pathways for employing older persons.
29. Many inputs suggested promoting affirmative action through a comprehensive suite of programs and regulatory measures including access to lifelong learning, education and continuous training; reconsideration of policies that stimulate early exit; abolishing mandatory retirement ages; introducing flexible options for pre-retirement employment (such as half-time contracts); specialist job search and recruitment programs; motivating employers to recruit and retain older workers (such as subsidies, rebates on social security contributions, cash incentives, public works, asset grants); self-employment assistance; active labour market policies (such as job, vocation and occupation matching); professional orientation, career-planning counselling, professionalization contracts and labour insertion; lessening barriers to employment entry (such as for disadvantaged groups, older persons on the move); and dedicated public service programs.

Access to career development, technical and vocational guidance programs, placements services and vocational and skills development

30. International instruments,⁴³ recommendations⁴⁴ and regional instruments⁴⁵ contain provisions that support career development, technical and vocational guidance programs, placement services and vocational and skills development for older persons, without significant elaboration. The International Covenant on Economic, Social and Cultural Rights at article 6 includes steps to be taken to achieve the full realization of the right to work shall include technical and vocational guidance and training programmes, policies, and techniques to achieve steady economic,

⁴² A/HRC/33/44, para. 61.

⁴³ International Covenant on Economic, Social and Cultural Rights, art. 6.

⁴⁴ ILO Older Workers Recommendation, 1980 (No. 162), para. 5.

⁴⁵ Inter-American Convention, art. 18, 20, African Protocol, art. 16.

social, and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

31. The ILO highlighted the importance of the right to education and ensuring that skills development is protected by a life-course approach whereby skills development and support services (including special measures and protections) can be given at any point in time as continuous interruptions lead to difficult situations in older age. Israel and other States noted the creation of specialist job search facilities for older persons including in rural areas. Argentina noted work training programs that target unemployed older persons who do not receive a retirement pension. India and Italy also noted the central importance of education, lifelong learning, and vocational skills to remaining in the workforce. Overall, inputs underlined the importance of standards that promote access to career development, technical and vocational guidance programs, placement services and vocational and skills development on an equal basis with others but including through specialist providers, programs, and services, including those targeting hard-to-reach groups.

Access to flexible or gradual retirement schemes and flexible working practices for older workers

32. International recommendations include older person-specific guidance on flexible retirement schemes and flexible working hours and work practices for older persons.⁴⁶ Instruments exist on old-age insurance.⁴⁷ Regional instruments promote older person-specific standards on flexible retirement and work practices,⁴⁸ without significant elaboration. The Inter-American Convention promotes labour policies that take account of the needs and characteristics of older persons, with the aim of fostering workplaces that are suitable in terms of working conditions, environment, work hours, and organization of tasks.⁴⁹ The ILO suggested the use ‘conditions’ instead of ‘practices’ for broader scope and legal certainty.
33. Various inputs noted national arrangements including Austria’s scheme of pre-retirement part-time work (*Altersteilzeitgeld*) which includes reduction of work for up to five years before retirement, with various arrangements including the option of part-time pension (*Teilpension*). Similar schemes enabling supplementary pensions were noted by Belarus, Czech Republic, and France. The Office of the Procurator for the Defense of Human Rights of El Salvador noted that pension schemes for older persons should be prioritised where older person’s experience poverty at a disproportionate level. Inputs collectively noted that flexible retirement can include gradual retirement and deferred retirement. Gradual retirement involves progressively reducing working time and or workload over a period. Deferred retirement involves extending employment beyond ‘retirement age’. Inputs noted that older persons need support in making and implementing retirement decisions and that retirement decisions are complex and influenced by a multiplicity of factors including individual circumstances (such as financial resources) and societal

⁴⁶ ILO Older Workers Recommendation, 1980 (No. 162), paras. 21, 14 respectively.

⁴⁷ ILO Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35); ILO Old-Age Insurance (Agriculture) Convention, 1933 (No. 36).

⁴⁸ Inter-American Convention, arts. 17-18, African Protocol, arts. 6-7.

⁴⁹ Inter-American Convention, art. 18.

influences (such as retirement income policy). Push and pull factors also bear on decisions; push factors are negative circumstances that pressure individuals to retire (such as poor health) while pull factors are positive aspects that attract (such as pursuit of leisure activities).

34. Examples of national laws establishing flexible work practices included Australia's national 'Fair Work' laws, which provide employees 55 and older with the right to request flexible working arrangements after 12 months of service. Chile noted the recent Positive Aging Bill, which seeks to modify the Labor code by inserting a range of specific measures and accommodations for older persons. Similar examples were given by Mexico and the Dominican Republic. Many inputs emphasized that standards should promote various modes of work flexibility for older persons. These include organizational flexibility where organizations adapt to changes in their environment, such as an ageing workforce; employee flexibility – the ability of older persons to adapt to changes in their work or in their organizations with support and accommodations; flexible work – the ability to adapt older person's contracts to allow greater adjustability to their changing circumstances; and flexible work arrangements – organizational practices that help older persons decide when, how and where work is conducted. Inputs provided numerous examples of flexible work arrangements include flexible start and finish times; compressed hours (such as more hours over fewer days); part-time and casual work; job sharing; flexible rostering; working from home or another location; 'purchasing' extra paid leave; unpaid leave; time off in lieu; banking hours; and gradual increase or decrease in work hours (such as during transition to retirement). Inputs also underlined that standards must describe and protect against inappropriate or exploitative work practices.

Promotion of older persons' self-employment and entrepreneurship

35. International instruments and regional instruments do not address entrepreneurship or self-employment beyond noting the need for regulation to prevent abuse.⁵⁰ The Principles for Older Persons promote older persons' rights to have access to other income-generating opportunities.⁵¹
36. Various inputs such as Belarus, Israel and Mexico described programmes to assist in self-employment through training in entrepreneurial skills, financial literacy, and facilitating access to financial resources. The Russian Federation and Turkey gave examples of self-employed pensioners retaining the right to indexation of pensions, compensation and benefits despite self-employment. The ability to earn other income was also raised by the Office of the Provedor for Human Rights and Justice Timor-Leste and Age Platform Europe. The Commission on Human Rights of the Philippines noted mainstream programs supported older persons' self-employment and entrepreneurship. Inputs suggest that standards must address age discrimination and ageism within the entrepreneurship realm. Standards should address intersecting forms of discrimination in programs such as that reduce older women's access to self-employment or entrepreneurship.

⁵⁰ Ibid.

⁵¹ United Nations Principles for Older Persons, principle 2.

37. Inputs noted that self-employment is an influential factor increasing work enjoyment in later life and is linked to greater autonomy and flexibility. Submissions suggested that older entrepreneurs still face societal challenges such as discrimination, societal expectations, and a lack of support services. Inputs stressed that standards should address the acquisition of digital, financial, and business skills, particularly in rural areas.

Favourable, fair, and safe working conditions when undertaking formal, informal or unremunerated work

38. International instruments provide general standards about favourable, fair, and safe working conditions in formal, informal or unpaid work.⁵² Regional instruments promote these issues without significant elaboration.⁵³ The ILO noted that standards should more broadly address safe and healthy working environments. The Independent Expert previously reported that older persons (particularly older refugees) face restrictions on the right to work, compromised conditions and pressure to perform informal work, and can experience exclusion from economic recovery initiatives during times of emergency and displacement.⁵⁴
39. Some States including Slovenia and Spain described national laws stipulating special attention to the safety and health of older workers by considering special risks to which these workers are exposed. Various inputs noted that informal sectors include older persons working in poorly paid and sometimes hazardous jobs, conditions, and circumstances. Inputs such as Aging Nepal noted that informal work was often unregulated and older persons therefore lacked protections; informal work falling outside of state laws and control, including those related to occupational, safety and health. Many inputs noted that age discrimination posed a significant risk to older workers and standards should recognize that discrimination decreases work enjoyment and engagement; lowers the sense of belonging, job satisfaction and organizational commitment; causes a greater incentive to retire early, and creates adverse health outcomes, including lower physical health and increased psychological distress.

Access to prompt remedies and redress when older persons' right to work and access to the labour market is denied

40. International and regional instruments do not articulate the specific right to access prompt remedies and redress when older persons' right to work or access to the labour market is denied. International standards apply in respect of violence and harassment.⁵⁵ The ILO suggested that standards must address older persons' remedies in respect of their rights to work, at work and within the labour market. ILO stressed that access to labour justice is critical for normative standards – highlighting the connection between the right to work and access to justice.

⁵² ILO Occupational Safety and Health Convention, 1981 (No. 155); ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

⁵³ Inter-American Convention, art. 18.

⁵⁴ A/HRC/42/43, paras. 32, 42, 60-61.

⁵⁵ ILO Violence and Harassment Convention, 2019 (No. 190), art. 10.

41. The Finnish Human Rights Center and other inputs noted remedies available for age discrimination in the workplace. Inputs including the Law Council of Australia noted remedies for age discrimination should not be made difficult or impossible by overly complex legislative requirements. The Law Council of Australia and HelpAge International suggested standards should promote specific mechanisms to reduce burdens on complainants, including a positive duty on employers to take reasonable and proportionate measures to eliminate ageism and discrimination, and the inclusion of a shifting burden of proof in such cases before adjudicative bodies. Inputs generally described the need for systems of enforcement and remediation of rights, including administrative and judicial systems and regulatory procedures such as investigations, penalties, and fines.

D. State obligations

42. International instruments and treaty body general comments⁵⁶ detail State obligations in general terms. Regional instruments impose State obligations on awareness raising,⁵⁷ promotion, participation in follow-up mechanisms,⁵⁸ data collection,⁵⁹ and actions and measures ensuring implementation.⁶⁰
43. Inputs suggested specific State obligations including ensuring non-discriminatory access to the labour market; enacting laws prohibiting age discrimination, ageism, and harassment; removing mandatory retirement laws; protecting free association; and promoting the State's role as a model employer. Further, many inputs submitted that States must provide services that support the right to work, including comprehensive employment policies, social protection policies and embedded life-course approaches. Inputs including International Disability Alliance also suggested that States must also provide adequate services and social protection to support older persons with intersecting issues by addressing the additional costs faced by them due to systemic, regulatory, and structural barriers to equal treatment at work and in retirement. The need for improved data collection and analysis, including data on women's unpaid work, was highlighted by many including Cuba and the Ukrainian Parliament Commissioner for Human Rights. The Commission on Human Rights of the Philippines, the Regional Centre for the Welfare of Ageing People in Cameroon and Age Platform Europe noted that data was essential as reference in the targeting of beneficiaries under government programs and services.
44. The Office of the Provedor for Human Rights and Justice Timor-Leste noted that States should facilitate intergenerational training and mentoring programs. Inputs such as Age Platform Europe submitted that States must eliminate ageist assumptions and prejudices, including internalized ageism, through research, awareness-raising, education, intergenerational interventions, and change of organizational culture. Additionally, Australia recognized the importance of developing a workplace culture that values the skills and experience of mature age people through a range of targeted programs. This includes development of age-inclusive and diverse workplaces through occupational health and safety rules and

⁵⁶ CESCR General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons; CESCR General Comment No. 18: The Right to Work.

⁵⁷ Inter-American Convention, art. 32, African Protocol, arts. 19, 23.

⁵⁸ Inter-American Convention, arts. 33-35, African Protocol, art. 19.

⁵⁹ Inter-American Convention, art. 4, African Protocol, art. 21.

⁶⁰ Inter-American Convention, art. 4, African Protocol, art. 22.

supporting measures to develop sustainable and inclusive workplaces, such as through age diversity campaigns. In this regard, Israel noted its “Age Diversity” campaign to encourage the employment of older persons and break stereotypes.

E. Special considerations

45. International and regional instruments do not provide older person-specific standards for special measures⁶¹ or specific considerations, including for older women in work, or informal or unpaid work. Standards do exist on social security and social protections including in respect of old age pensions. The ILO noted the importance of standards for occupational safety and health policies, the promotion of social dialogue and collective bargaining on issues related to older workers in the world of work, and adequate social protection frameworks incorporating flexible age-qualification. As a threshold issue, ILO noted that when workers are protected and regularized, they are no longer informal, so standards need to give special consideration to the formalization of older workers in the informal economy.
46. Germany noted the importance of promoting ageing-appropriate design of working conditions of older workers. Many inputs noted the need for standards that recognized the gendered nature of unpaid and informal work. For example, noting that older women undertake unpaid care roles without choice, including caring for family and other dependants. Cyprus noted that older women face double disadvantage when it comes to remuneration, caused by intersectional discrimination on various grounds. Inputs noted that special measures are needed to address the gender pay gap throughout the life course, which puts older women at risk of poverty. Measures should promote the provision of services, social protection and basic infrastructure, the creation of more paid jobs in the care economy, and the elimination of the negative impact of the pay gap on wages and pensions. The Dominican Republic noted the importance of recognizing and regularizing older women’s unpaid work, including caring work. Other areas needing specific consideration include collective bargaining/negotiation, the outsourcing of contracts and the spread of platform labour.

Responsibilities of non-State actors such as the private sector

47. Many inputs referred to the States ability to define the responsibilities of non-State actors through laws and policies. Inputs recommended standards should incorporate specific obligations to include private entities. Examples provided included where the CRPD specifically obliges States to promote private sector employment through policies and measures, including affirmative action, incentives, and other measures,⁶² and to ensuring reasonable accommodation.⁶³
48. Submissions including from Czechia noted the importance of legal regulation of factors that prolong work including occupational hygiene and mobility, active aging and education. Some inputs noted certain national protections for older persons only applied to the State. Conversely, in Serbia the Law on Prohibition of Discrimination applies to the private and public sector and is applied where older persons face

⁶¹ ILO Convention No.111 refers to special measures on the basis of age.

⁶² CRPD, art. 27 1. (h)

⁶³ Committee on the Rights of Persons with Disabilities, , General Comment 6 on Article 5: Equality and non-discrimination, para 67 (f).

discrimination in the labour market. Similar examples of broad application were given by Germany and other States. The Kenya National Commission on Human Rights noted that a human rights based-approach would include non-State parties. Most inputs noted that standards should clearly elaborate that they apply to private entities, particularly given the extent of the global private labour market. Inputs also noted that courts, regulatory bodies, inspectorates, and human rights institutions should be authorized, expert and resourced to protect the right to work of older persons in relation to private enterprises.

F. Best practices and main challenges

49. Best practices include specialist, dedicated national human rights and discrimination bodies for older persons such as the Australian Age Discrimination Commissioner who advocates for the rights of older persons in work including resolving individual complaints and can undertake research into and raise awareness about ageism and age discrimination and provide guidance for employers on discriminatory and ageist practices. Best practices included national laws, programs and incentive schemes specifically aimed at providing affirmative action for older persons in work (including for women and other groups). National laws promoting flexible arrangements in work, retirement and retirement income were also noted. Inputs also noted national standards on occupational, safety and health, training, and accessibility for older persons in work. Czechia noted the generational tandem tool - a form of job sharing between an existing employee of pre-retirement age and a newly hired employee - usually a person newly entering the labor market (graduate, parent returning from parental leave). The measure ensures the emergence of intergenerational solidarity and the intergenerational transfer of experience. Spain, in its submission, described intergenerational clusters within private companies that encourage shared knowledge and experience. Mexico noted their National Employment Service assists older persons looking for a job, offering intermediation between employers and employees, training employers to know the rights of the older persons with the objective of avoiding ageism, and providing reasonable accommodation in the workplace.

50. Key challenges include implementation mechanisms and systems that are older person-specific with standards that are meaningful, regular, and evidence-based across laws, policies, and budgetary processes. Mexico noted the need for specific regulation of employment for older persons that considers their specific needs. The Dominican Republic posed whether quotas could be used to increase older persons' access to work. Inputs such as Russia drew attention to the necessary acquisition of ICT access and digital skills for older persons, including in rural areas. The WHO recently noted the need to ensure participatory design of artificial intelligence technologies by and with older persons.⁶⁴ Additional challenges noted include promoting laws, policies, and programs to eliminate ageism and discrimination against older persons on age and other intersecting grounds; budgetary measures to provide incentives to include, retain and advance older persons in work and achieve secure retirement incomes; and the recognition and regularization of informal and unpaid work.

⁶⁴ Ageism in artificial intelligence for health: WHO policy brief. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO at p.10.

G. Summary and conclusions

51. No existing international instruments contain standards that specifically define, protect, and promote older persons' right to work and access to the labour market. Binding instruments provide general, labour-specific or age specific standards but do not provide older person-specific standards on the various components described by the guiding questions. Non-binding recommendations address issues of age discrimination in work; affirmative action programs to promote hiring of older persons; access to career and skills development programs; access to flexible retirement or working practices; and favourable, fair, and safe working conditions. Non-binding recommendations do not include provisions on the elimination of ageism; the provision of reasonable accommodations for older persons; promotion of older persons' self-employment or entrepreneurship; and access to prompt remedies and redress when the right to work is denied.
52. Regional instruments provide normative examples of the right to work including the various components described by the guiding questions. Regional standards are not consistent in definitional quality, scope, or application, and contain limited elaboration of issues including how work is defined; the extent to which they offer protections against age discrimination in all matters related to employment, including on intersecting grounds, and the extent of allowable exceptions; access to career and skills development programs; access to flexible retirement or working practices; and favourable, fair, and safe working conditions. Regional instruments do not include explicit provisions on the elimination of ageism; the provision of reasonable accommodations for older persons; affirmative action programs to promote hiring of older persons; promotion of older persons' self-employment or entrepreneurship; and access to prompt remedies and redress when the right to work is denied.
53. Inputs noted constitutional arrangements, national laws, policies and programs that generally protect the right to work and access to the labour market. Few inputs described comprehensive, older person-specific standards on the right to work and access to the labour market, and where described they tended to form part of a broader set of laws and principles usually implementing regional instruments. Further, national systems of protection for older persons did not address the breadth of the various components described by the guiding questions.

III. Access to Justice

A. Conceptual Basis

54. Access to justice is a core element of the rule of law. It is a fundamental right and an essential prerequisite for the protection and promotion of all other human rights. Guaranteeing access to justice is indispensable to democratic governance as well as to combat social and economic marginalization. Therefore, access to justice is a

cross-cutting right, in line with other principles such as equal recognition before the law.

B. Definition

55. International instruments include the right to access to justice in general and thematic instruments and treaties,⁶⁵ treaty body general comments,⁶⁶ regional instruments,⁶⁷ and statements of principles.⁶⁸ The United Nations Principles for Older Persons assert the importance of accessing justice to enhance autonomy, protection, and care.⁶⁹ Regional instruments include older person-specific rights,⁷⁰ including in combination with equal protection before the law.⁷¹
56. Various States including Cuba and Finland described universal constitutional rights to equality before the law. Inputs did not note any instances of comprehensive, specific national laws protecting older persons' right to access justice. Malta noted the importance of access to justice within the Sustainable Development Goals.⁷² The Agewell Foundation USA emphasized that standards must recognize that in the future older persons will constitute a greater proportion of crime victims, offenders, litigants, judges, attorneys, witnesses, jurors, and prisoners. The Office of the Procurator for the Defense of Human Rights of El Salvador noted that the 100 Rules of Brasilia on access to justice for people in vulnerable conditions includes aging but also asserted that a practical understanding of the access to justice implications of ageing were largely absent from national justice systems.
57. ECLAC emphasized the need for access to justice to ensure a cross-sectional and gender perspective. Inputs highlighted the need for standards to promote access to justice that is effective, unlimited, and actively supported, and reflect the principles of independence, participation, care, self-fulfillment, and dignity. Inputs noted that standards should note that the right to access to justice supports older persons' participation in society, pursuit of personal development; and lives of dignity and respect that are free from abuse; and is a means of receiving reasonable care and assistance from their family and the State. The Law Council of Australia's input

⁶⁵ Universal Declaration of Human Rights, arts. 7, 8, 9, 10 and 11; International Covenant on Civil and Political Rights, arts. 2 (1) and (3), 14 and 26; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of Persons with Disabilities, arts. 12 and 13.

⁶⁶ Human Rights Committee, General comment No. 32 on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 7; Human Rights Committee, General comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant (CCPR/C/21/Rev.1/Add.13) para. 15; Committee on Economic, Social and Cultural Rights, General comment No. 9 on the domestic application of the Covenant (E/C.12/1998/24) para. 9; Committee against Torture, General comment No. 3 on the implementation of article 14 (CAT/C/GC/3), paras. 2 and 4; Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice (CEDAW/C/GC/33), paras. 1 and 2; Committee on the Rights of the Child, General comment No. 5 on general measures of implementation of the Convention on the Rights of the Child (CRC/GC/2003/5), para. 24.

⁶⁷ Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), arts. 6, 13, 20 and 21.

⁶⁸ See A/HRC/37/25 and the International Principles and Guidelines on Access to Justice for Persons with Disabilities.

⁶⁹ United Nations Principles for Older Persons, principle 12.

⁷⁰ Inter-American Convention, art. 31.

⁷¹ African Protocol, art. 4.

⁷² SDG 16 Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

described access to justice as concerning the link between a person's formal right to seek justice and effective access to the legal system or legal remedies.

C. Normative elements

Legal capacity

58. International instruments generally guarantee legal capacity; however, none specifically guarantee legal capacity for older persons, other than for older persons with disabilities.⁷³ Regional instruments guarantee older persons' capacity through interconnected articles.⁷⁴
59. The Independent Expert previously emphasized that legal capacity, and supported decision-making are essential for the respect of the autonomy of older persons and their individual rights, in their own capacity to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work and to choose their place of residence.⁷⁵ The Independent Expert previously noted that the courts should be guided by the objective of ensuring that older persons can lead a self-determined and autonomous lives and conflicts of interest and undue influence should be regulated, and safeguards to ensure free and informed consent should be adopted.⁷⁶ The Independent Expert noted particular attention should be given to illiterate older persons or older persons with less formal education.⁷⁷
60. El Salvador's Special Law for the Protection of the Rights of Older Persons recognizes the legal capacity of older adults. It establishes that judicial bodies shall apply the Inter-American Convention to protect older person's legal capacity. Nigeria noted that legal capacity meant that older persons have the right to represent themselves in proceedings should they choose. International Disability Alliance noted that for older persons with disabilities, in particular those with dementia, the threats to exercising legal capacity may come from laws regarding guardianship, conservatorship, and laws permitting forced treatment. Such laws prevent older persons with disabilities from effectively accessing justice systems. The Ethiopian Human Rights Commission cautioned that laws allowing denial of capacity for reasons of senility remain ambiguous and without proper definition. The Finnish Human Rights Center likewise noted that while age cannot be a reason for denial of capacity, age-related illness can be. Similarly, the Office of the Commissioner for the Human Rights of Poland noted functional limitations connected with advanced age can lead to determinations of legal incapacity. Serbia noted decisions to remove legal capacity must be time limited and subject to mandatory review. The importance of review and appeal processes was also noted by the Guatemala Human Rights Ombudsman and the Serbian Protector of Citizens.
61. Various inputs suggested normative standards should complement article 12 of CRPD, but that additional factors lay behind the denial of legal capacity that were

⁷³ ICCPR, art. 16, CEDAW, art. 15, CRPD, art. 12.

⁷⁴ Inter-American Convention, art. 30 (see also 5, 7, 11), African Protocol, arts. 4-5.

⁷⁵ A/HRC/30/43, paras. 99-101.

⁷⁶ Ibid.

⁷⁷ Ibid.

not related to disability, such as ageism and ageist attitudes. Submissions noted that although CRPD article 13 (access to justice) includes ‘age-appropriate accommodations’, this is limited by CRPD’s reach to the intersection of age and disability. Inputs noted that standards must address common areas of denial of legal capacity to older persons without disabilities, including on other intersecting grounds such as gender. Inputs suggested that standards must ensure that age is no reason for removal of an older person’s legal capacity and recognize that access to justice is an essential element of the process by which removal is considered and through which autonomy and agency can be protected and maintained.

Elimination of the influence of ageist stereotypes in judicial or non-judicial proceedings

62. International and regional instruments do not address the issue of ageism within judicial or non-judicial proceedings, including the award of damages or compensation. The Independent Expert previously noted examples where courts failed to give adequate credibility to older women’s evidence,⁷⁸ and to the issue of legal capacity,⁷⁹ and that access to justice was critical because entrenched ageist attitudes hinder older persons from claiming their legal rights.⁸⁰ The WHO’s recent policy brief on ageism in artificial intelligence for health notes that the implicit and explicit biases of society can be replicated by artificial intelligence technologies, including those used in the criminal justice system.⁸¹
63. Many inputs noted the need to address ageist stereotypes in judicial or non-judicial proceedings. Slovakia noted that damages or compensation awarded by the state (for instance in cases of violent crime) is based on technical formulas that do not take age into account. The Commission on Human Rights of the Philippines similarly noted that age does not vary damages available under the Civil Code. Conversely, other inputs noted that compensatory damages are consistently lower for older persons, and that awards of damages generally decrease with older age. Inputs noted the discriminatory effect of calculations of lost income and earnings, life expectancy and other lost opportunities in judicial and non-judicial proceedings, and in cases settled ‘out of court’. ILC Canada noted ageism and age stereotypes can influence tribunals’ calculation of damages in considering future losses and non-pecuniary damages, leading to a reduction of compensation.⁸² Inputs noted that standards must promote new insights into ageist stereotypes through research into legal processes and their outcomes.

Access to timely legal proceedings

64. International instruments do not specifically address older persons’ access to timely legal proceedings, including in situations of immediacy. Regional instruments address access to timely legal proceedings, noting its importance in situations of

⁷⁸ A/76/157, para. 60.

⁷⁹ Ibid, para. 83.

⁸⁰ A/HRC/48/53, para. 14.

⁸¹ Ageism in artificial intelligence for health: WHO policy brief. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO at pp.2-3.

⁸² ILC Canada noted: Eugenio Mantovani, Benny Spanier & Israel Doron, “Ageism, Human Rights, and the European Court of Human Rights: A Critical Analysis of the Carvalho v. Portugal Case (2017)-(2018)11 DePaul J. Soc. Just. 1; Elizabeth Weeks, “Healthism in Tort Law” (2019) 12:1 Journal of Tort Law pp. 81-126.

immediacy.⁸³ The Inter-American Convention requires that State Parties shall ensure that judicial action must be particularly expedited in instances where the health or life of the older person may be at risk.”⁸⁴

65. Inputs noted that the timing and duration of legal and justice processes is a barrier requiring specific consideration, including the need for access to timely processes that are adjusted for age. El Salvador noted the Special Law for the Protection of the Rights of the Elderly guarantees access to justice with preferential and expeditious treatment. The Special Law also establishes that agility must be guaranteed in the procedures in which older persons are involved, especially in those cases in which they have the status of victim. Kenya suggested special and priority listing procedures and many inputs suggested the use of practice directions; referral to quicker and more efficient processes; and clearer information about time, and duration standards. Many inputs suggested that the right should enshrine a guarantee of expeditious access to, and hearing and determination of legal matters, whether before courts, tribunals, alternative pathways, or informal processes. Inputs also noted that reasonable timeliness depend on the complexity of legal matters and expedition should not create less favourable outcomes. India and the Agewell Foundation India gave the example of the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill that incorporates processes with specific timeliness standards, wherein claims for maintenance and assistance must be disposed of within 60 days.

Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons

66. International instruments do not address explicitly accessibility of legal institutions except in respect of disability.⁸⁵ Regional instruments address accessibility of institutions of justice through standards on accessibility without significant elaboration.⁸⁶
67. Inputs reflected the concept that inaccessible justice is justice denied and suggested that standards on accessibility should canvass practical, logistical, and procedural aspects. Many submissions noted the importance of access to physical, remote and virtual and ICT infrastructure. The Office of the Commissioner for the Human Rights of Poland noted the importance of universal design and described necessary attention to architectural, information and communication accessibility. The OHCHR’s compilation of substantive inputs on the focus area of the eleventh session of the Working Group on “Access to justice” described physical access issues as including lack of accessible buildings, transportation, waiting/seating areas and information, and noting that access is particularly problematic for people in remote or rural areas.⁸⁷ Infrastructure must be accessible to older litigants, judges and staff, lawyers, witnesses, prisoners and the public. Many inputs raised the double jeopardy of how mobility and transport availability limits access to the legal system. Nigeria noted the importance of removing language barriers to access.

⁸³ Inter-American Convention, art. 31.

⁸⁴ Ibid. See also Council of Europe, Promotion of Human Rights of Older Persons, Recommendation CM/Rec(2014)2.

⁸⁵ CRPD, art. 9, 13.

⁸⁶ Inter-American Convention, art. 26, African Protocol, art. 18.

⁸⁷ A/AC.278/2021/CRP.4, p.4.

Inputs also noted that access standards must consider the availability of systems for sensory and age-related health issues. Inputs suggested that accessibility standards must extend beyond the court to lawyers and legal aid services, remote registries, access points, and information services.

68. Inputs such as Nigeria gave examples of effective remote access to courts through travelling and mobile courts. Other examples were provided through inputs including the Justice on Wheels Program noted by the Commission on Human Rights of the Philippines. While not specifically for older persons, it aims to literally bring justice closer to the poor, vulnerable, and marginalized groups. Many inputs noted accessibility standards must also address the costs and fees associated with legal processes including court and lawyer's fees. The Albanian People's Advocate noted that unless fees and costs can be waived across the entirety of legal processes, older person's access will be constrained. Inputs also noted barriers to accessing courts can arise from the intersection of gender, race, indigenous status, and culture. Several inputs suggested the participation of older persons through consultative processes in a similar manner as is required by CRPD.

Access to legal services

69. International instruments do not include older person-specific standards on access to legal services. Regional instruments do include older person-specific legal services, although without significant elaboration.⁸⁸ The Independent Expert previously reported that it is essential that legal assistance is available to older persons to secure access to essential services and that standards should legally empower older persons, including through information and guidance on legal rights, particularly for older persons with literacy (including digital), language or access issues.⁸⁹ The Independent Expert has also previously noted that access to older persons' organizations with standing to sue allows for strategic litigation or collective action, and that the establishment of collective redress mechanisms can be tailored to overcome the difficulties encountered by older victims.⁹⁰ UNODC noted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which require accessible, effective, sustainable and credible legal aid systems,⁹¹ with specialized services for groups including older persons.⁹² UNODC noted principle 10 on equity in access to legal aid affirms that special measures should be taken to ensure meaningful access to legal aid for older persons, including their special needs, such as gender-sensitive and age-appropriate measures. Agewell Foundation USA noted the reality that in many cases legal assistance was only available for criminal cases involving likely incarceration and not more broadly.
70. Forms of legal assistance described by inputs varied significantly. Argentina noted legal assistance responses at municipal level were accessible to older persons. Chile noted the Positive Aging Bill which will facilitate legal representation of residents in long term care and specific contexts such as in the family courts. Serbia and

⁸⁸ African Protocol, art. 4.

⁸⁹ A/75/205, paras. 89-90.

⁹⁰ Ibid.

⁹¹ Legal aid includes "legal advice, assistance and representation [...] that is provided at no cost for those without sufficient means or when the interests of justice so require", as well as legal education, access to legal information.

⁹² United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems at principles 6, 10.

Slovenia also noted availability of legal assistance for residents of long-term care, including where older persons are placed within an institution against their consent. Mexico noted a national response through their National Institute for Older Persons, which provides a range of legal assistance services to older persons. Many inputs noted that older persons were not a priority client group within national legal assistance policies or programs. Australia, Kenya and India gave examples of how older persons can be prioritized for legal assistance within national legal assistance policy arrangements. Submissions such as the one of Belarus also noted that dedicated services for older persons were often infrequent events, such as on the International Day of Older Persons.

71. The Ethiopian Human Rights Commission noted that legal aid schemes must have reach into rural areas to be effective and encouraged the use of public legal education. Inputs suggested standards must facilitate development of older person-specific legal assistance programs and services that ensured equitable access for older persons and should address specific areas of legal need including the substantive topics considered by the Open-ended Working Group.⁹³ Many inputs suggested legal assistance should be expert and competent in the legal issues faced by older persons and also adapted and scaled to meet older persons' legal and other needs. Examples included models such as Australia who has developed a network of multi-disciplinary, elder abuse services, attending older persons at home, or in health care or long-term care settings. Inputs also suggested the use of nationwide hotlines as a primary contact and point for further secondary referral. Inputs such as the Regional Public Foundation Assistance for the Elderly (Dobroe Delo) noted the need for practical assistance with completion and checking of forms and common legal documents.

Access to alternative, non-judicial pathways to justice

72. International instruments do not address access to alternative, non-judicial pathways to justice for older persons. Regional instruments do address access to alternative, non-judicial pathways to justice for older persons. The Inter-American Convention requires States to promote alternative dispute settlement mechanisms.⁹⁴
73. The Independent Expert previously recommended the establishment of an independent and impartial procedure or body, possibly within an existing independent body, with the mandate to examine complaints pertaining to older persons, and to apply the jurisdiction of the independent body under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to consider its specific application to guarantee safe care for older persons, including in residences for older persons with dementia.⁹⁵ In its submission, the Protector of Citizens Serbia described its role in similar terms.
74. The Dominican Republic suggested that older persons may benefit from a 'single window' access point that guarantees and facilitates access to justice. Many submissions suggested strong opportunities for standards to promote alternative, non-judicial pathways to justice that are scaled, adapted and responsive to older

⁹³ <https://social.un.org/ageing-working-group/documents/seventh/ChairsSummaryOEWG7.pdf>

⁹⁴ Inter-American Convention, art. 31.

⁹⁵ A/75/205, paras. 91-92.

persons' needs. This includes processes that lead to investigation and settlement of legal disputes including such models as dispute-resolution, facilitation, mediation, conciliation, and arbitration. Inputs suggested standards must address the need for low-threshold mechanisms to begin complaints in situations of immediacy, detention, or confinement or where older persons face literacy, language, and other barriers.

75. Customary and traditional aspects were noted as important by the Kenya National Commission on Human Rights. The Kenyan National Council of Elders provides a platform to interact, negotiate and resolve conflicts and offers alternative dispute resolution. Examples of Specialist Age Discrimination and Human Rights Commissions and specialization within national human rights institutions were provided by Australia, the Finnish Human Rights Center and the Guatemala Human Rights Ombudsman. Many inputs cautioned that bodies without decision-making power, or whose recommendations were unenforceable may prove to be of little consequence in guaranteeing the right to justice for older people. Inputs also recommended standards should ensure bodies have the power to conduct own-initiative investigations into individual or systemic issues.

Access to reasonable accommodation in all legal and administrative proceedings

76. International instruments do not require reasonable accommodations in all legal and administrative proceedings except in respect of disability.⁹⁶ OHCHR's report on article 13 of CRPD noted that age-appropriate accommodations are critical for the right to a fair trial and the right to participate in the administration of justice.⁹⁷ Regional instruments do address procedural accommodations in all legal and administrative proceedings without significant elaboration.⁹⁸ The Council of Europe Recommendation notes that States should take appropriate measures to accommodate the course of the judicial proceedings to the needs of older persons, for example by providing, where appropriate, free legal assistance and legal aid.⁹⁹
77. A range of accommodations were noted. Cyprus and Slovenia noted older persons accused of criminal offences or who are victims have access to certain procedural accommodations including legal assistance. Jordan noted the use of technology to support older court users including flexible modalities for giving evidence. Mexico noted the Older Persons' Rights law required among other things, that older persons must receive a dignified and appropriate treatment in any judicial proceeding, whether it involves them as aggrieved or convicted persons. The Commission on Human Rights of the Philippines noted that jail penalty and punishment may be suspended for those aged over 70 years at the time of offending. International Disability Alliance noted that for older persons with disabilities, including dementia, accommodations to access justice may include support persons of their choosing to help others understand their communications, or to explain proceedings in a way that they understand.

⁹⁶ CRPD, arts. 9, 13, 16.

⁹⁷ A/HRC/37/25, para.24.

⁹⁸ Inter-American Convention, art. 31.

⁹⁹ Council of Europe, Promotion of Human Rights of Older Persons, Recommendation CM/Rec(2014)2.

78. The Ethiopian Human Rights Commission noted that accommodations should be described within national laws to ensure their effective implementation. The Office of the Procurator for the Defense of Human Rights of El Salvador noted necessary adjustments must include the investigation stage. The Office of the Commissioner for the Human Rights of Poland noted opportunities to appoint other types of advisers including tax adviser or patent counsellor for administrative court proceedings. Many inputs suggested standards should ensure that reasonable age-based accommodations are provided across legal and justice systems and that law enforcement, courts and corrections institutions must be adaptable to and accommodate the needs of older persons at all stages, including circumstances where an older person encounters special difficulties based on their functional capacities. Inputs also noted that reasonable accommodations should recognize intersectionality and be broadly available notwithstanding the nature of the older person's engagement in the legal or justice system, whether as an older witness with mobility issues, or a litigant unable to effectively serve court documents. Many inputs reiterated the need for special attention to age-sensitive measures such as support with caregiving arrangements and advocacy.

Adequate and appropriate training to all those working in the administration of justice and law enforcement

79. International instruments do not include standards for training on the rights of older persons. Regional instruments do include standards for training on protection of the rights of older persons,¹⁰⁰ and in how to effectively interpret and enforce relevant policies and legislation.¹⁰¹
80. Armenia and India in their submissions noted the importance of equality and non-discrimination training for personnel of justice administration and law enforcement including specific training on legal issues for older persons. Inputs suggested that the standards should consider training on age, age-related health, and ageing-related issues. Help Age International Spain described 'understandable justice' as a justice attentive to the reality of each older person, and especially older victims of crimes. Inputs also suggested mandating of training by specialist older persons' agencies. The Guatemala Human Rights Ombudsman noted that it had conducted such training for institutions through the Ombudsman for the Elderly. Examples of judicial training were given by Australia and the Law Council of Australia and included specialized benchbooks and commentaries that address older persons' specific legal issues, needs and the provision of reasonable accommodations.

Accommodation of the needs of older prisoners

81. International instruments and regional instruments do not include standards on accommodating the needs of older prisoners as described by the guiding question.

¹⁰⁰ Inter-American Convention, paras. 31; African Protocol, art. 4.

¹⁰¹ African Protocol, art. 4.

82. Inputs noted that general standards lack age or older person specific protections beyond non-discrimination provisions.¹⁰² Regional processes and recent jurisprudence were cited as examples of where the needs of older prisoners have been considered.¹⁰³ Kenya noted that prisons should be age-friendly environments. Inputs noted the need to create penal and corrections standards that address the new dynamics created and faced by older persons. This included addressing the needs of a diversity: first-time older prisoners; ageing recidivist offenders who enter and exit prison throughout their lifetime and return to prison in older age; prisoners serving a long sentence who grow old while incarcerated; and prisoners sentenced to shorter periods of incarceration late in life.
83. Inputs noted that standards should reflect obligations under the Convention against Torture. Various inputs described key areas for standards including: physical conditions including accommodations for functional limitations; adjustments to built environment that cause accessibility and mobility issues and fall hazards (such as bunks, ladders, stairs); inadequate temperature, lighting and noise controls; strategies to protect older prisoners from (and also reduce) ageism, victimization, violence, abuse and discrimination; the opportunity for intergenerational role modelling and peer support programs within and between generations; internal emergency planning; and internal complaints procedures. Inputs also noted standards should address engagement in purposeful rehabilitative activities and work; pre-release literacy, numeracy, digital literacy, education, and vocational training; pre-release planning; expedited and compassionate release; and post-release support in housing, family and occupational repatriation, health, financial assistance, and community integration.

Equal access of older prisoners to services available to the general population

84. International instruments and regional instruments do not contain specific provisions for equal access to services by older prisoners. The Council of Europe Recommendation provides Member States should ensure that the health of older persons is monitored at regular intervals and that they receive appropriate medical and mental health care; and should provide older persons in detention with conditions appropriate to their age, including appropriate access to sanitary, sports, education and training and leisure facilities; and should ensure social reintegration of older persons after release.¹⁰⁴
85. The Ukrainian Parliament Commissioner for Human Rights highlighted these issues as a priority noting that failure to receive qualified medical care leads to an increase

¹⁰² United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Nelson Mandela Rules), A/RES/70/175; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, Rules 2, 7, 25, 26; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187.

¹⁰³ Inter-American Commission on Human Rights, *Observations on the Request for Advisory Opinion to the Inter-American Court Of Human Rights: Differentiated Approaches To Persons Deprived Of Liberty*, http://www.oas.org/en/iachr/tr/dppl/oc/2019_11_25_obs_eng.pdf; See Submission of the UN Independent Expert on the enjoyment of all human rights by older persons to the Inter-American Commission, [https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/Advisory Opinion submission.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/Advisory%20Opinion%20submission.pdf); See for example *Sawoniuk v UK*, Application no 63716/00, 29 May 2001; *Papon v France*, (no 1) Application no 64666/01, 7 June 2001, *Patsos v Greece*, Application no 10067/11, 25 September 2012; *Mouisel v France*, Application no 67263/01, 2002.

¹⁰⁴ Council of Europe, Promotion of Human Rights of Older Persons, Recommendation CM/Rec(2014)2.

in the incidence of severe and chronic diseases and mortality. Adjustment to detention is among the most significant life events and many inputs noted that standards should ensure older prisoners' equal access to health services (physical, mental, cognitive); oral and dental care; medication; medical, assistive, functional (including loss of bodily function), mobility, communication, and therapeutic aids; dietary and nutritional needs; programs to eliminate premature ageing; palliative care; religious and spiritual supports; privacy; and family visits.

86. States such as Jordan noted the construction of specific detention facilities for older prisoners. In its submission, Serbia noted the importance of ensuring quality health care to prisoners as a current focus of government. Inputs suggested standards should address specific groups needing attention including older first-time prisoners, older women prisoners, older indigenous prisoners, older LGBTIQ prisoners, and older prisoners with disabilities. The Finnish Human Rights Center and other inputs noted that older prisoners have discrete needs including social and emotional needs, and have a high prevalence of depression, which can lead to reduced activity and isolation, grief, chronic ill health, and self-harm. Inputs stressed the importance of family connection, visitation, maintenance of relationships, friendships, and support structures. Inputs noted specific health needs (a disproportionately high disease burden, failing physical and thought processes, long-term physical and psychiatric disabilities, trauma, and dementia). Inputs also noted older prisoners' needs around privacy and dignity including pain treatment, loss of bodily functions, loss of memory, and problem with sharing facilities such as toilets and showers.

Access to prompt remedies and redress in cases of denial of justice

87. International and regional instruments do not explicitly provide for access to prompt remedies and redress when older persons' right to access justice is denied.
88. In respect of older persons with disabilities, the Special Rapporteur on the rights of persons with disabilities previously noted that States have an obligation to prevent and investigate all acts of violence and abuse and to prosecute and, when convicted, punish the perpetrators, as well as to protect the rights and interests of the victims and survivors. All protection services must be age, gender and disability-sensitive.¹⁰⁵ Slovakia noted its approach to older victims of crime treated older persons over the age of 75 as particularly vulnerable and this attracted specific remedies and support.
89. The Serbian Protector of Citizens noted national procedures for compensation for violations of the right to trial within a reasonable time. Inputs noted standards should include procedures that provide access to prompt remedies and redress when access justice is denied, which should particularly address situations where denial of the right is based on ageism or age discrimination. HelpAge International and others noted that standards should proscribe timely and effective responses including access to rights of appeal, restitution, indemnity, compensation, reparation, and criminal sanctions. Inputs also suggested guarantees that necessary

¹⁰⁵ A/74/186, para. 59.

and appropriate supports are provided to facilitate redress including legal assistance, psychological support, and other interventions.

D. State obligations

Mechanisms to ensure the enjoyment of the right of older persons to access justice

90. International instruments do not include specific mechanisms or measures to ensure implementation of the right to access justice for older persons. Regional standards do include specific mechanisms or measures to ensure implementation of the right to access justice for older persons.¹⁰⁶
91. Regional instruments require States parties to develop and strengthen public policies and programs to promote dispute settlement,¹⁰⁷ ensure training within justice administration,¹⁰⁸ and review existing laws and policies.¹⁰⁹ Regional instruments also contain general implementation obligations.¹¹⁰ This includes mechanisms and measures including: adopting and strengthening budgets, laws, and measures (including affirmative measures); promoting specialization; encouraging participation; and gathering data. Regional instruments also provide implementation requirements in respect of related rights of equal protection before the law,¹¹¹ independence and autonomy,¹¹² elimination of discrimination,¹¹³ and deprivation of liberty.¹¹⁴
92. The Independent Expert previously recommended that States must establish effective redress mechanisms and ensure access to justice for victims of discrimination based on age, including provision of legal aid, support as well as accessible and age-sensitive legal proceedings, and that States must take measures to raise awareness in society, including among public officials, the private sector, and older persons themselves, about the meaning and consequences of ageism, age equality and non-discrimination and about the existing legal provisions and remedies.¹¹⁵ The ILO suggested standards must mirror the shift towards online and ICT processes within legal systems by promoting digital literacy and ICT access.
93. Many inputs noted that standards should include specific obligations to respect, promote, protect, and fulfill the right, including by regulation, enforcement, and observance by non-State actors. This includes resourcing of institutions, providing legal assistance, and support services; providing accessible information about the rights of older persons, the possibilities for protecting those rights, including through legal systems and processes, and legal assistance and supports available.

¹⁰⁶ Inter-American Convention, art. 4, African Protocol, art. 22.

¹⁰⁷ Inter-American Convention, art. 31.

¹⁰⁸ Inter-American Convention, art. 31, African Protocol, art. 4.

¹⁰⁹ African Protocol, art. 4.

¹¹⁰ Inter-American Convention, art. 4, African Protocol, art. 2.

¹¹¹ Inter-American Convention, art. 30, African Protocol, art. 4.

¹¹² Inter-American Convention, art. 7, African Protocol, art. 5.

¹¹³ Inter-American Convention, art. 5, African Protocol, art. 3.

¹¹⁴ Inter-American Convention, art. 31.

¹¹⁵ A/HRC/48/53, para. 79.

Age Platform Europe and the Law Council of Australia raised the need to address older persons' own perceptions that the justice system could not offer them remedies.

Special considerations

94. International instruments do not include older person-specific considerations or specific issues except in respect of disability.¹¹⁶ Regional instruments do require special consideration in the ways already described: treatment on an equal basis with others, the provision of procedural accommodations, due diligence and preferential treatment in administrative and legal proceedings, and expedition where the health or life of the older person may be at risk.¹¹⁷
95. Submissions indicated that the opportunity lies with the State to regulate non-State actors involved in legal and justice systems. Inputs noted that standards should promote non-State sector (including private sector) engagement through policies, measures, and contractual arrangements, including affirmative action, incentives, and including by ensuring reasonable accommodations. The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, was raised as a contextual example,¹¹⁸ wherein access to justice includes considerations of customs, traditions and rules, multiple forms of discrimination, diverse languages and difficulties in gaining access to courts, police officers, prosecutors and lawyers.
96. The situation of older women (including widows) has been previously highlighted by the Independent Expert in respect of violence and abuse,¹¹⁹ and property and inheritance rights,¹²⁰ including the need for specialized programs to offer legal assistance to older women experiencing violence and abuse.¹²¹ Intersecting discrimination for older women is recognized by regional instruments.¹²² The Independent Expert also previously noted that experiences of discrimination and stigma also mean that older LGBTIQ persons might mistrust public institutions and this may discourage them from seeking access to justice.¹²³ Inputs including the ILO noted the COVID-19 pandemic has mandated increased reliance on digital justice, and while such initiatives may reduce barriers for many, the digital divide often impedes access to justice for older persons.¹²⁴

E. Implementation – best practices and main challenges

97. Best practices included specialist legal services for older persons. Examples include Australia's single free-call phone line which automatically redirects callers seeking information and advice on elder abuse to an existing legal assistance service in their jurisdiction. Best practices also include Principles for Implementation, which can

¹¹⁶ See CRPD, arts. 2, 13.

¹¹⁷ Inter-American Convention, art. 31.

¹¹⁸ A/HRC/RES/39/12 *28 September 2018).

¹¹⁹ A/76/157, para. 60.

¹²⁰ Ibid, para. 33.

¹²¹ Ibid, para. 59.

¹²² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 22.

¹²³ A/HRC/48/53, para. 58.

¹²⁴ International Labour Organization, Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic – ILO, 2021.

be found in respect of specific areas such as access to justice for persons with disabilities.¹²⁵ The Principles and Guidelines are intended to assist States and other actors to design, develop, modify, and implement justice systems that provide equal access to justice for all persons with disabilities, regardless of their roles in the process, in accordance with CRPD.

98. Best practices also included intergenerational models of legal assistance. Best practices examples also included El Salvador's Special Law for the Protection of the Rights of the Elderly which among other things requires institutions to carry out training and awareness programs for their staff to provide dignified treatment to older persons, and provide older persons with free legal advice and assistance services in any type of judicial, administrative or notarial proceeding, especially in those in which an imminent danger to the rights and integrity of the person is presumed; and which requires all State institutions to develop administrative mechanisms for the filing of complaints when there are facts that violate the rights of older persons within their respective institutions.
99. Challenges included determining older persons' legal needs and establishing effective and just mechanisms of dispute resolution, including resourcing access to justice within competing budgetary priorities. The legal and systemic accountability of settings such as residential and long-term care facilities was noted as requiring attention, particularly given older persons' experience of the pandemic. Challenges also included ensuring access to justice in processes that deprive older persons of their liberty, equality, autonomy, and independence, such as in settings that include forced treatment. Access to justice challenges include ensuring specialized official visitor programs, guardians, and legal representation with appropriate safeguards.
100. Kenya and Argentina noted that challenges include technical legal language and the complexity of legal processes. Although online tools facilitate the use of the services that enable access to justice, and are seemingly reasonable or procedural accommodations, they may also trigger potential barriers. Spain, Argentina and the Finnish Human Rights Center raised the digital divide as a principal challenge. Technological improvements were applied unevenly across regions and in many countries were reduced by limitations on the level of public investment and lack of infrastructure. This included access to the internet in rural areas or where older persons were subject to restrictions on their mobility including pandemic related health measures.

F. Summary and conclusions

101. No existing international legally-binding instruments contain standards that specifically define, protect, and promote older persons' right to access to justice. They provide general and thematic standards but do not provide older person-specific standards on the various components described by the guiding questions.
102. Regional instruments provide normative examples of the right to access to justice including the various components described by the guiding questions. Regional standards are not consistent in definitional quality, scope, or application, and

¹²⁵ International Principles and Guidelines on Access to Justice for Persons with Disabilities, Geneva, August 2020.

contain limited elaboration on issues including the guarantee of legal capacity; access to timely proceedings; accessibility; access to legal assistance; access to alternative, non-judicial pathways; training of those working in administration of justice. Regional instruments do not include explicit provisions on the elimination of ageism; reasonable accommodations other than procedural; the needs of prisoners; equal access of older prisoners to services; and access to prompt remedies and redress when the right to access to justice is denied.

103. Inputs noted constitutional arrangements, national laws, policies and programs that generally protect the right to access to justice. Few inputs described comprehensive, older person-specific standards on the right to access to justice, and where described they tended to form part of a broader set of laws and principles often implementing regional instruments. Further, national systems of protection for older persons did not address the breadth of the various components described by the guiding questions.
