CHAIR'S SUMMARY

Open-ended Working Group on Ageing

for the purpose of strengthening the protection of the human rights of older persons

(General Assembly resolutions 65/182 and 67/139)

Fourth Working Session

New York, 12-15 August 2013

I. Introduction

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

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

3. Pursuant to operative paragraphs 1, 2 and 4 of the General Assembly resolution 67/139 adopted on 20 December 2012, the Open-ended Working Group on Ageing was requested to "consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons, based on the holistic approach in the work carried out in the fields of social development, human rights and non-discrimination, as well as gender equality and the empowerment of women, and taking into account the inputs of the Human Rights Council, the reports of the Working Group and the recommendations of the Commission for Social Development and the Commission on the Status of Women, as well as the contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing.". The Working Group was also requested to "present to the General Assembly, at the earliest possible date, a proposal containing, inter alia, the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons, which are not currently addressed sufficiently by existing mechanisms and therefore require further international protection;" as well as to "submit to the Working Group by its fourth session and from within existing resources a compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons, including those of conferences, summits, meetings or international or

regional seminars convened by the United Nations and intergovernmental and non-governmental organisations."

II. General Overview

4. The proposed organisation of work of the fourth session of the Open-ended Working Group on Ageing drew on paragraph 4 of resolution 67/139, on the outcomes of the global second review and appraisal of the Madrid International Plan of Action on Ageing, and on consultation with regional groups to propose main topics for discussion.

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

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

7. In their general statements, several countries articulated the need for a legally binding instrument to promote and protect the rights and dignity of older persons, and called for moving negotiations forward to discuss the main elements of an international convention for the human rights of older persons. Other Member States stated that existing international human rights instruments apply to older persons, and that current deficiencies in the protection of the rights of older persons are due to poor implementation, not normative gaps. Several countries highlighted age-related discriminatory practices that continue to exist despite current international legal instruments. They called for the full utilisation of current international frameworks in addressing the issue of ageing, and emphasised the importance of assessing current mechanisms of protection and reviewing existing gaps, so as to gradually build international consensus step-by step. Additional proposals towards strengthening the protection of human rights of older persons included revisiting and updating the United Nations Principles on Ageing adopted by the General Assembly in 1991 to form 'Guiding Principles,' as well as mainstreaming the rights of older persons within existing human rights frameworks, as well as within the United Nations entities.

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

9. The provisional agenda of the fifth working session of the Open-ended Working Group will be elaborated over the coming months via the bureau and their constituents.

III. Summaries of Panel Discussions

Second meeting of the fourth working group
12 August 2013 (pm)
Panel 1: Promotion and protection of human rights and dignity of older persons: contributions from the second global review and appraisal of the Madrid International Plan of Action on Ageing, 2002 (moderated by Tomas Milevičius, Deputy Head of Family Policy Unit, Lithuanian Ministry of Social Security and Labour)

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

11. **Ms. Chonvipat Changtrakul, First Secretary at the Permanent Mission of Thailand to the United Nations** made reference to the Asia-Pacific Intergovernmental Meeting on the second review and appraisal of the Madrid International Plan of Action on Ageing, which was held in Bangkok in 2012. Participating in the meeting were thirty members and associate members of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), representatives of civil society organisations and various United Nations agencies. Ms. Changtrakul stated that the regional review meeting confirmed progress in implementing the Madrid International Plan of Action through developing national plans and mechanisms on ageing; strengthening social protection systems; engaging active participation of older persons in policy formulation; and ensuring accessible, affordable and available healthcare services. She noted challenges to the full implementation of the Plan of Action, including inadequate resources; difficulties in mainstreaming the gender dimensions of ageing; marginalisation of employment

opportunities for older persons; uneven social protection coverage; inadequate investment in healthcare; as well as lack of measures to address violence and abuse of older persons.

12. **Mr. Fernando Morales, President of the Governing Board of the National Council for Older Persons and Director General of the National Hospital of Geriatrics and Gerontology in Costa Rica, as we as the Academic Director of undergraduate and graduate Geriatrics and Gerontology at the University of Costa Rica** discussed the outcomes of the third Intergovernmental Conference of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC/CEPAL). The Conference highlighted demographic challenges within the region, including age, gender and ethnic discrimination; neglect, abuse and violence; access to health services; access to justice; social security; universal healthcare; care and homecare provision; as well as measures to strengthen legal structures for older persons. The meeting adopted the San Jose Charter, which supports the work of the Open-ended Working Group on Ageing towards improving the legal framework for older persons. Mr. Morales added that a follow-up meeting took place earlier this year and urged Member States to accelerate the implementation of the San Jose Charter. He highlighted main challenges including restrictions to social security and healthcare, as well as limited institutional capacity. Mr. Morales concluded that existing instruments are insufficient to protect the rights of older persons, and that the absence of a legally-binding treaty for the human rights of older persons is an obstacle for the implementation of existing plans and related policies.

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

Third meeting of the fourth working group
13 August 2013 (am)
Panel 2: Update on multilateral processes
(Moderated by Stelios Makriyiannis, Vice-Chair, Bureau of the Open-ended Working Group on Ageing)

14. **Mr. Y. K. J. Yeung Sik Yeun**, Chief Justice in the Republic of Mauritius and Commissioner of the African Commission on Human and People's Rights, presented a timeline marking notable events and important milestones to drafting a Protocol to the African Charter on the Rights of Older Persons in Africa. The Protocol sets down obligations and duties of states parties in promoting and protecting rights of older persons. Mr. Yeung shared the guiding principles behind the draft Protocol including the African Union Policy Framework and Plan of Action on Ageing (2002) and the declarations and

standards set in relevant international and regional instruments. He elaborated on the African specific situation in which several Member States are least developed countries, and how that resulted in adopting a holistic approach to produce a practical text that is workable and cost effective. Mr. Yeung walked through the various chapters of the Protocol, and emphasised that the African Union Conference of Ministers of Social Development (CAMSD) acknowledged the draft Protocol and provided its political umbrella in support of its adoption at its third session in November 2012. Mr. Yeung concluded with a recommendation of CAMSD, which called for the advocacy and support of the elaboration of a United Nations Convention on the Human Rights of Older Persons which would strengthen and reinforce the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and to continue promoting the Madrid International Plan of Action on Ageing.

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

16. **Ms. Ana Pastorino,** Alternate Representative of Argentina to the Organisation of the American States (OAS) stated that ageing must be addressed as a human rights issue because it has important consequences in the design and implementation of public policies and the adoption of legislation. It is such consideration that led the American States to commit to working on incorporating ageing issues into public policy agendas, and to examine the feasibility of preparing an Inter-American convention on the rights of older persons. This resulted in a 2011 report highlighting the fact that not all the countries in the region have specific national legislation for seniors, and that institutional arrangements vary significantly among countries. This demonstatres lack of uniformity and standardisation of the issue in the region. Ms. Pastorino stated that specific rules on the type of protection needed for older persons deserved to have a legally binding instrument that safeguards their human rights in the context of the urgency imposed by progressive demographic changes. On this basis, formal negotiations of the Draft Inter-American Convention on human rights of older persons were launched. Ms. Pastorino introduced the various chapters of the Draft, and stated that while most of the text has received consensus, a few paragraphs remain pending. Ms. Pastorino concluded that negotiations

should be finalised shortly as the Draft is to be presented for adoption at an OAS Extraordinary General Assembly to be held in October 2013.

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

Fourth meeting of the fourth working group
13 August 2013 (pm)
Panel 3: Social security and the right to health (moderated by Dr. Emem Omokaro, Executive Director, Dave Omokaro Foundation, Nigeria)

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

intragenerational approach that acknowledges the differences of members of one generation.

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

20. **Mr. Hasmy Bin Agam, Chairman of the Human Rights Commission of Malaysia (SUHAKAM) shared the engagement of SUKAHAM in the protection and promotion of the rights of older persons.** He talked about the situation of older persons in Malaysia, in particular the institutional framework consisting of the National Policy and Plan of Action for Older Persons of 2011, the National Health Policy for Older Persons of 2008 and the National Advisory and Consultative Council for Older Persons, which address the rights of older persons. While Malaysia enacted an employment act, a minimum retirement age act, a domestic violence act and care centre act. Various public fora and discussions were organized on the rights of older persons, it lacks a comprehensive piece of legislation focused on older persons. While the discussion on the rights of older persons is gaining prominence at regional and international levels, many issues related to the lives of older persons in Malaysia still need be addressed. A current focus of SUHAKAM is the issue of care services and support for caregivers. In addition, the speaker pointed out that the social protection and retirement system for older persons is fragmented and that various Government agencies are involved in the delivery of services. The social security system is limited to the formal sector while the informal sector, including the self-employed, is excluded. Regarding health care, older persons receive free and comprehensive health services and medicines in public hospitals and clinics and the outpatient registration fee at public hospitals/clinics is waived. There is a shortage of geriatric healthcare professionals and workers as well as of formal and non-formal community care. SUHAKAM calls for the inclusion of age as one of the grounds upon which discrimination is prohibited in the Federal Constitution and supports the drafting of a binding UN convention on the rights of older persons or alternatively, supports a regional (ASEAN) convention on rights of older persons.

21. **Mr. Alejandro Bonilla-Garcia, Director of the Social Protection Department of the Policy Portfolio of the International Labour Organization (ILO)** talked about social protection. He stated that 60 per cent of all ILO agreements refer to social protection and that a minimum threshold or social protection floor has been established by

the United Nations. The goal is that at no time during one's life should one be without social protection. The speaker pointed out that since large parts of the economy in developing countries are informal, old age in developing countries will be informal and therefore outside of any social protection frame. In addition, the current high unemployment of youth could lead to poor older persons in the future. A focus on education is essential in preventing old age poverty. The resources of developing countries should be allocated in a more effective manner to social protection interventions. Mr. Bonilla-Garcia recommended that strengthening social protection monitoring; increasing resources; improving communication and awareness of the importance of social protection; removing impediments to receive social protection; and to develop a culture of social protection to change mindsets are important. The ILO asked Member States to develop action plans and national capacity on social protection. In addition, employment systems and care systems for older persons should be elaborated. The ILO focuses more on advice regarding social protection and recommends an inter-sectoral and integrated approach to demographic ageing.

22. During the interactive dialogue, the questions/observations centred on whether social protection and social investment amount to rights. In addition, the role that Governments, individuals and their families play in dealing with demographic ageing, income and social security as well as health was pondered. Whether ageing and older persons will lead to economic growth and the demand for new services or whether the costs would outweigh investments were also considered. Representatives from Member States and civil society organizations discussed comprehensive social policy approaches that address all members of society in comparison to social policy interventions that target older persons only and asked for good national practices with regard to social protection, elder abuse, long term care, and dementia. Also, the cost of a convention on the rights of older persons was brought up and the advantages/disadvantages of a legally-binding instrument. Panel members clarified that social protection is a right and that the number of persons who are not covered is increasing. They pointed to the cost-effectiveness of palliative care and the positive response to it in various countries, reported on the European experience that economies improve due to more services for older persons, on the importance of intergenerational solidarity in successfully addressing the concerns of older persons and on studies from the Organisation for Economic Co-operation and Development (OECD) on the cost of long-term care. Panellists also elaborated on the advantages of a dual approach to enhancing the rights of older persons by focussing on a regional legally binding instrument before approaching it on the international level.

Fifth meeting of the fourth working group
14 August 2013 (am)
Panel 4: Discrimination and Access to Work (moderated by Dr. Jill Adkins, Attorney at Henningson & Snoxell and Consultant at Age Rights International)

23. **Prof. Israel Doron, Head of Department of Gerontology, University of Haifa** stated that age is generally not considered a forbidden ground of discrimination in existing international human rights instruments, and that they do not include any mention of ageism, which in turn implies the need for interpretation in order to apply human rights to older persons. He clarified that while the concept of ageism is relatively new, the invisibility of older persons and their negative stereotype is old and deeply rooted in our societies. Prof. Doron asserted that there should be no doubt of the need for an international convention for the human rights of older persons in light of clear and

convincing normative and empirical evidence. He cited three examples of each, some of which had already been presented to the Working Group in previous sessions. Prof. Doron pointed out that arguments claiming there is only an implementation gap are not based on evidence but serve to conceal a clear sub-text that is social justice. He clarified that 'social justice' is a crucial element to deliberations on the rights of older persons, which has been missing from texts of previous sessions of the Working Group. Prof. Doron presented various types of social injustice based on Nancy Fraser's classification, such as exploitation, marginalisation and deprivation, in addition to cultural injustice exemplified by domination, non-recognition and disrespect. Prof. Doron affirmed that systematic stereotyping of and discrimination against people because they are old is just as prevalent as racism and sexism. He concluded that the problem today is neither an enforceability gap, implementation gap, nor legal construction gap, but rather a social recognition justice gap, and that understanding this point reveals why the Madrid Plan of Action is insufficient, as it does not transform social construction of old age. On the contrary, Prof. Doron concluded, that it allows governments to affirm their existing ignorance to the symbolic injustice older persons experience in their daily lives.

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

25. **Ms. Elizabeth Grossman, Regional Attorney, New York District Office of the United States Equal Employment Opportunity Commission** presented an overview of the Age Discrimination in Employment Act (ADEA) of 1967, which protects individuals who are 40 years of age or older from employment discrimination based on age. Ms. Grossman clarified that the law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, promotions, layoff and training, and stated that discharge was a very large issue for older persons. She clarified that age harassment, such as offensive remarks about a person's age, is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision. Ms. Grossman stated that under the ADEA, it is unlawful to retaliate against an individual for opposing employment practices that discriminate based on age, or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the Act. She noted that the Older Workers

Benefit Protection Act of 1990 amended the ADEA to specifically prohibit employers from denying benefits to older employees. The US congress recognised that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. Therefore, in limited circumstances, an employer may be permitted to reduce benefits based on age, as long as the cost of providing the reduced benefits to older workers is no less than the cost of providing benefits to younger workers. Ms. Grossman also stated that employment policies and practices that have an age based disparate impact are permissible if based on reasonable factors other than age, and that such provision is an affirmative defence that the employer must prove.

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

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

clarifying human rights of older persons in a consolidated form, when governments already have such obligations as signatories to existing human rights instruments.

Sixth meeting of the fourth working group
14 August 2013 (pm)
Panel 5: Main findings of (a) Note Verbale in follow up to resolution A/RES/67/139; and (b) the Compilation of existing international legal instruments, documents and programmes that directly or indirectly address the situation of older persons

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

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

30. During the interactive dialogue with civil society, non-governmental organisation representatives took the floor to express support for a convention on the rights of older persons and underline the importance of general principles and specific rights as were mentioned in their written statements to the Working Group. The advantages of a convention would be to raise awareness with regard to the situation of older persons, to

clarify the rights of older persons and to provide a comprehensive framework of all rights, to prohibit age discrimination and to provide a monitoring mechanism that would remedy the lack of action with regard to protecting older persons. Non-governmental organisation representatives mentioned issues of particular concern that should be addressed in a convention: dementia, palliative care and pain management, participation and engagement of older persons, economic security and social protection, housing, health, long term care, freedom of physical and financial abuse, older persons in emergency situations, and guardianship. The fact that the Madrid International Plan of Action on Ageing is not legally binding was seen as an impediment to the full enjoyment of all rights by older persons. Some Member States expressed their support for a convention, due to the fact that previous legal instruments effectively addressed the gaps in rights of particular social groups and that the existing system does not function sufficiently. Regional instruments, such as the San Jose Charter could serve as guideline for a possible convention. Other Member States stated that while protection and implementation gaps exist, they are not of a normative nature. In addition, existing legal instruments cover the rights of older persons already and there is no consensus on a convention among Member States. However, the development of indicators on the well-being of older persons would be helpful. Support for a Special Rapporteur on the rights of older persons was mentioned by some Member States.

Seventh meeting of the fourth working group
15 August 2013 (am)
Discussions on the Way Forward (moderated by the Chair)

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

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

33. Some Member States addressed the General Assembly resolution 67/139 entitled ‘towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons,’ and argued that its recorded vote of 54 in favour to 5 against with 118 abstentions, attests to the lack of a common position on a new United Nations convention on the rights of older persons.

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

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

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

37. Other delegates noted that negotiating a new convention does not necessitate universal consensus, making reference to existing international instruments such as the Convention on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW), which were not adopted with support from all Member States. Delegates argued that if a new convention is not universal, it does not mean that it is not valid.

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

39. Argentina announced the formation of a cross-regional Group of Friends of Older Persons, as Human Rights holders and actors of development during the closing debate. It aims at building on discussions of the Working Group and transforming them into concrete actions. The Group of Friends also intends to focus discussions to further the dignity and rights of older persons beyond the annual session of the Working Group by generating dialogue across the United Nations system including agencies and subsidiary bodies, among others. Delegates emphasised that the Group of Friends is not a negotiating block and is open to all Member States sharing its objectives and priorities across all regional groups.

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

IV. Closing Remarks by Chair

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

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

43. The Chair noted that in his view, the above consensus implies that the international community is assuming a new social contract that responds to the need for greater international protection of the rights of older persons. To achieve this goal, the Chair stated that expert panellists, Member States delegates and civil society representatives proposed various mechanisms.

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

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

46. The Chair made reference to the interactive dialogue with civil society organisations present at the meeting, and noted larger numbers of representatives from European and North American organisations in comparison to an under-representation of

representatives from other regions. The Chair called for efforts towards including civil society organisations from all over the world, especially less developed countries in the process of the Open-ended Working Group on Ageing. The Chair made reference to the practice during the Convention on the Rights of Persons with Disabilities, and invited Member States to include in their delegations to the Working Group, members of civil society organisations in their countries and regions.

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

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