

A close-up photograph of an elderly woman with glasses and a young girl smiling together. The woman is on the left, wearing glasses and a patterned top. The girl is on the right, wearing a striped shirt. They are both smiling warmly at each other.

HUMAN RIGHTS ARE FOR ALL AGES

THE EU MUST LEAD THE RALLYING
FOR A UN CONVENTION

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FOREWORD



‘A principle guiding my work as Independent Expert on the enjoyment of all human rights by older persons is making older persons visible and lending them a voice. It is a privilege to share this goal with AGE Platform Europe which brings together organizations of senior citizens from European countries. The importance of listening and integrating the perspectives and concerns of older persons has now been made more evident than ever before due to the COVID-19 pandemic.

I assumed the role of the Independent Expert in May 2020, in the midst of the first wave of the COVID 19 pandemic. The impacts of the pandemic proved particularly worrying and wide-ranging for older persons. It showed that older persons are not in the focus of the policy makers and therefore left behind. This needs to change urgently.

In line with the mandate given to me by the UN Human Rights Council, I work to strengthen the realization of the human rights of older persons, assess the implementation of relevant national, regional and international standards, and report on developments, challenges and protection gaps, among others. Since my appointment, this has concretely meant monitoring and assessing the dramatic impact of COVID-19 on the human rights of older persons. Therefore, I dedicated the mandate’s very first report to the General Assembly in October 2020 to this topic (A/75/205). The report notably elaborates on the greater risks affecting older persons with respect to their rights to life and health but also the disproportionate and often age-discriminatory responses to the pandemic. Unless older persons’ diversity, voices and views are truly taken into account, their rights and autonomy can be and have been compromised. The report also reiterated that the lack of a dedicated and comprehensive international legal instrument to promote and protect the rights and dignity of older persons has practical implications as the issues of ageing remain inconspicuous, insufficient and fragmented in existing human rights frameworks.

There are encouraging signs of political support and increased visibility, and I am hopeful they are foretelling of a higher political priority placed on older persons. The UN Secretary General's Policy Brief on Covid-19 and older persons from May 2020 highlighted that the current human rights framework needs to be strengthened at the international and national levels. The European Union and all its Member States expressed support to the Policy Brief. The conclusions of the EU Council on "Human Rights, Participation and Well-Being of Older Persons in the Era of Digitalisation" are another positive sign – the first conclusions focusing on older persons in a decade and stressing the need for a rights-based approach to anchor all ageing policies in Europe.

It is timely and positive to see the European Union's engagement on ageing. The European Union and its Member States can play a significant role to advance and strengthen the human rights framework with respect to older persons, including by highlighting the diversity and positive contributions by older persons to our societies. Working together with civil society will be key and I encourage AGE Platform Europe members to bring forward the voices and experiences of older persons so that the rights of older persons are at the very front of policymaking. Older persons must participate in all decision-making processes, not just in those related to ageing, so that no older person is left behind'.

Ms Claudia Mahler

UN Independent Expert on the Enjoyment of all Human Right by Older Persons

5 March 2021

SUMMARY

'No one should be left behind, no human right ignored'

With these words the Council of the European Union (EU) reiterated its strong [commitment](#) to advancing universal rights for all in the context of the ongoing pandemic and the global recovery. The EU and its member states are global leaders in the defence and promotion of human rights. They have committed on several occasions to advancing the human rights of older persons and are making noteworthy efforts to increase the participation of older people in society. But progress is in practice slow, limited and inconsistent. Persistent ageism is hampering improvements in practice. The ongoing debate about the feasibility of a new UN convention allows the EU to demonstrate unambiguously its leadership to ensuring equal respect of everyone's rights at all ages.

The call for a convention is not new but is even more urgent now! Amidst a global pandemic, all EU member states have expressed deep concern over the escalation of ageism and have agreed to work towards a '[human rights-based recovery](#)' and to foster more [inclusive, equitable, resilient and age-friendly societies](#).

A convention can make a real tangible difference in the equal enjoyment of human rights in older age in the following ways:

- First, it can challenge all those attitudes, practices and structures that - intentionally or not - attribute less value to the dignity of individuals because of their (perceived) old age. This can be achieved by consistently promoting a human [rights-based](#) framing that gives salience to the equality, dignity and inclusion of older persons. In addition, it would define in concrete terms the policy changes, the kinds of support and enabling conditions that are necessary so that universal rights can be equally enjoyed in old age. A convention reaffirming equal rights in old age, would also make it considerably difficult to disregard or trivialize the discrimination and abuses experienced by older people.
- Secondly, a convention can empower older persons as rights holders to claim their rights and be fully involved in public affairs.

- Finally, a new convention would rectify the systemic neglect of older people in the existing human rights guarantees and ensure a sustained focus. In this way, it can help better mainstream older people's issues within the existing human rights mechanisms and to better address intersecting forms of inequalities.

This paper makes several recommendations to the EU and its member states that underline the need for a new convention and the potential role that they can play in this process.



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INTRODUCTION

The European Union and its Member States have a proud history of defending and promoting human rights globally. They have also been pioneers in recognizing the rights of older persons and outlawing age discrimination.

- Article 25 of the EU Charter of Fundamental Rights recognized that protecting older people's right to live in dignity and independence and to participate in society is a matter of equality.
- Age discrimination is prohibited under the EU treaties and age equality is a general principle of EU law.
- The EU also set out its ambition and priorities in the 2020 Council conclusions on "[Human Rights, Participation and Well-Being of Older Persons in the Era of Digitalisation](#)", stressing the need for a 'rights-based approach' to anchor all ageing policies in Europe.
- All EU member states have legislation on age discrimination covering at least some areas of life.
- The EU and its member states have also supported the establishment of the mandate of the UN Independent Expert on the enjoyment of all human rights by older persons, the first international body in charge of monitoring respect for the human rights of older persons.

In addition, EU member states are also parties to several instruments by the wider Council of Europe (47 states) that promote age equality and aim to guarantee the human rights of older persons:

- Article 23 of the Revised European Social Charter was the first ever provision worldwide enshrining 'the human rights of the elderly to social protection'.
- In 2014 the Committee of Ministers of the Council of Europe adopted a Recommendation on the promotion of the human rights of older persons.
- In 2017 the Parliamentary Assembly of the Council of Europe (PACE) adopted a recommendation on the Human Rights of Older Persons and their Comprehensive Care, which asked Member States to consider the necessity and feasibility of drawing up a legally binding instrument.

Now - more than ever - the EU needs to further strengthen its leadership to create fairer, more inclusive and resilient societies for all ages. The rallying call about a new Convention is about equal respect of everyone's rights at all stages of their lives. The UN Secretary General, the UN High Commissioner for Human Rights, the UN Independent Expert on the enjoyment of all human rights by older persons, citizens, and civil society organisations all support the call for the adoption of a new UN convention that would adequately protect our dignity as we grow older. It is in the common interest of all generations and all countries to uphold these values and allow people of all ages to fulfil their potential.

#EULEadsTheRally

WHY ACT NOW?

2021 marks 10 years since the first session of the UN Open-Ended Working Group on Ageing (OEWG). The OEWG was mandated by the UN General Assembly to identify possible gaps in the existing human rights system and to consider whether further instruments, such as a new convention would be appropriate to fill these gaps. Yet, set against the scale of violations we have witnessed over the last decade, progress is slow and limited.

▪ COVID-19 URGES FOR GLOBAL SOLIDARITY AND COOPERATION

COVID-19 serves as a stark reminder of how important global cooperation and solidarity is. Together, we have the capacity to respond to emergencies and to change the systems that underpin the inequalities, exclusion and human rights violations we have witnessed during the pandemic.

Older people have been hit hard by COVID-19. But their challenges are not unique or exclusive to the ongoing crisis. As the UN High Commissioner for Human Rights [put it in May 2020](#):

'This crisis has laid bare, and often amplified, many challenges that older people have been facing for years, such as discrimination based on older age, lack of social protection and access to health services, lack of autonomy and participation in decision-making, and risk of violence, neglect and abuse.'

We now have to make important decisions about our future. The lessons learned from the COVID-19 pandemic have shown us the weaknesses of our systems and where we need to put

our attention in order to build stronger, fairer and more inclusive societies for everyone. We need to fundamentally rethink how we age and the attention, recognition and support we give each other when we grow older.

▪ AGEISM IS ONE OF THE MOST PERVASIVE FORMS OF DISCRIMINATION

Ageism is hampering EU efforts to ensure the full participation of older persons in society. Based on the [2019 Eurobarometer Report on Discrimination in the EU](#), age discrimination - alongside gender discrimination- is the **most frequently experienced form of discrimination** in the EU. Over 40 % of individuals believe that age discrimination is widespread in their country.

Ageism has serious consequences both for older people and society at large. [Research](#) shows that older people with negative attitudes about ageing may live 7.5 years less than those with positive attitudes. Ageism has also been shown to cause cardiovascular stress, lowered levels of self-efficacy and decreased productivity. Ageism is also a major barrier to developing good policies. Problematizing older people as ‘vulnerable’ or equalizing ill-health with old age does not permit the enactment of policies that tap on older people’s potential. COVID-19 exposed in sharp ways how ageism can lead to segregation, neglect, abuse, and even death. Seeing older people as a burden also devalues the work of people who care for them. Ageism therefore makes it difficult to invest in care and improve the status and working conditions of caregivers.

As long as discrimination and inequalities on the basis of old age remain so commonplace, as long as older people are valued less, excluded from necessary health treatment, abandoned, left to die, subjected to violence and abuse, EU’s commitment to protect the human rights of all at all times cannot be realised. As society, we can benefit from the skills, experience and knowledge of the older generation by actively involving them in decision-making, in our communities, in paid and unpaid work and so on. **Fighting ageism is a cause for ourselves and a legacy for future generations. Unless we put an end on it, it will affect us all.**

‘Paying attention and responding to the persistent, detrimental ageism that affects so many, must be the first step towards ensuring that human rights apply equally for people of all ages. Because whether we are living in times of crisis or not, we all age, and we all hope to do it in dignity’.

[AGE Platform Europe and European Youth Forum, November 2020](#)

▪ GROWING CONSENSUS OF STATES FOR STRONGER LEGAL FRAMEWORKS

The pandemic has created even greater urgency and consensus about the need to assess the adequacy of existing legal frameworks to protect older persons from violations of rights at times of pandemic and beyond. More than 140 UN member states (including all EU member states) have signed a [statement](#) in support of the UN Secretary-General's [Policy Brief](#) on older persons and COVID-19. The Policy Brief called for:

‘the building of stronger legal frameworks at both the national and international levels to protect the human rights of older persons, including by accelerating the efforts of the Open-ended Working Group on Ageing to develop proposals for an international legal instrument to promote and protect the rights and dignity of older persons.’

In their statement, signatory member states also expressed *‘deep concern over the escalation of ageism, including age discrimination and stigmatization of older persons, which aggravate their vulnerabilities’* and stated their commitment *‘to fully promoting and respecting the dignity and rights of older people...’*. They also affirmed their intention of *‘working to strengthen global and national target responses to address the needs and rights of older persons and foster more inclusive, equitable, resilient and age-friendly societies.’*

▪ CITIZENS DEMAND A CONVENTION TO TACKLE INEQUALITIES AGAINST OLDER PEOPLE

To mark its 75th anniversary in 2020, the United Nations launched a global conversation with citizens on ‘building the future we want’. This far-reaching global debate gathered views on people’s priorities, identified challenges and opportunities, but also solutions to address future risks and bridge existing gaps. One of the recommendations that emerged from this [consultation](#) was that governments should take steps to *‘promote the creation of a new UN Convention to protect the rights of older people.’*

“Age inequality would be the greatest denial of the universality of human rights in their most fundamental sense. We will fight with all our strength against any generational apartheid!”

[Gang des Vieux en Colère, June 2020, Belgium](#)

▪ EU COUNCIL COMMITTED TO RIGHTS-BASED APPROACH TO AGEING

The [EU Action Plan on Human Rights and Democracy 2020-2024](#) adopted by the EU Council in November 2020, called on the EU to ‘*advocate for the enjoyment of all human rights by older persons at all times, as well as for ensuring adequate and sustainable solutions for their needs*’. The [EU Council conclusions on Human Rights, Participation and Well-Being of Older Persons in the Era of Digitalisation](#) (October 2020) adopted an innovative framing of ageing focusing on the impact of policymaking on the human rights of older people. With these conclusions, EU member states also requested the EU to give additional emphasis to the rights of older people in its external policy. Three Member States holding the EU Council presidency in 2020 and 2021 also released a [Declaration on Ageing](#) further asking the EU to identify possible gaps in the international human rights system for older persons. If gaps are observed, the Declaration suggests developing adequate responses to close them.

All these developments demonstrate that promoting and protecting the human rights of older persons in EU’s internal and external action is an urgent and critical priority for the EU, its member states and citizens. This now needs to be translated from words into concrete action.



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WHAT IS THE VALUE OF A NEW UN CONVENTION?

1. BLUEPRINT FOR CHANGE

▪ Reframing

The human rights violations that we have witnessed during the pandemic are not isolated cases; they are part of the wider societal problem of ageism. Policies and measures taken during the pandemic have problematized older people as merely vulnerable, thus overlooking older people's contributions to emergency responses and participation in various solidary efforts.

Such practices are in stark contrast with EU's commitment to active and healthy ageing and to intergenerational solidarity. With adequate support and protection from discrimination, we can sustain equal opportunities to live independent lives and contribute to our communities in old age. If we recognize that we hold the same rights at every stages of our life, we adopt the mindset necessary to develop the laws, policies, and infrastructures that will make the equal realisation of universal rights in older age possible.

Lose the ageist labels

When we label a group of individuals as 'vulnerable' or 'dependent', we wrap them with caution tape. Despite being paved with good intentions, this thinking will inevitably backfire. Such labels make it more likely to impose limits and ignore individual agency, autonomy and the right to flourishing and participation. Precisely because they consider that older people are inherently 'frail' or 'in need of protection', these labels fail to interrogate the deficits of our systems and services. They therefore cannot come up with the necessary ambition to change the laws, policies and services that create disadvantage in the first place.

A convention can provide a new framing to shape answers about the future we want and need. It would reaffirm that people, no matter their age, are equal in dignity and rights and thus authoritatively challenge the prevailing negative status associated with older age. A convention can trigger a dynamic of change that might otherwise not happen or not at the needed pace.

The EU has a key role to play in ensuring that the future we build after the pandemic builds on the core EU values of equality, solidarity and justice. Enshrining these principles in a UN convention can help us consistently promote solidarity between generations and a positive paradigm of ageing, which would allow everyone to grow, flourish and fulfil their potential regardless of age.

▪ **Accountability**

Human rights apply equally to all human beings, regardless of age. But in reality, human rights violations against older people are not always treated with the same level of scrutiny, gravity or urgency as violations against women, children or persons with disabilities, all of whom are covered by specific UN Conventions. The current human rights system is not adequately equipped to challenge ageist practices and discriminatory patterns entrenched in laws, policies and institutional structures. For instance, human rights mechanisms still accept age limits in laws that deny us the opportunity to equally contribute within society when we are older.

Why aren't existing human rights treaties fit-for-purpose?

International human rights law perpetuates biases and prejudice on the basis of older age. It talks about the 'problem of ageing' and depicts older people as 'frail' and 'dependent'. Existing norms use extensively the term 'elderly' and are overly focused on needs as opposed to older people's potential. Compared to other grounds of discrimination, human rights standards allow a much wider margin of discretion to accept discrimination, restrictions and segregation on the basis of old age. Existing norms refer to the enjoyment of human rights 'for as long as possible' as opposed to 'on an equal basis with others'. The current international framework has failed to extend to older persons the same human rights safeguards that everyone else in society has.

A convention would change this. Ageism would be recognised and treated as grave a violation of human rights as racism, sexism or ableism. Age-based measures in any future pandemic would face the same scrutiny as measures based on other prohibited grounds for discrimination such as gender, disability and race. Medical triage or segregation on the basis of age would not be morally or legally acceptable. A convention would impose the same level of scrutiny for quality of care and prevention of elder abuse in community and residential settings alike.

A new UN convention would create greater accountability for human rights violations against older persons.

By supporting a UN convention, the EU can demonstrate in practice its commitment in eliminating discrimination, inequalities and exclusion wherever they occur.

▪ Clear impetus for reform

Existing human rights treaties offer little clarity regarding how to address the specific rights violations experienced in older age. State and local actors need more detailed guidance in order to make the right decisions and build a fair and just society for all ages.

A convention would detail how existing state obligations must be interpreted to address biases, attitudes, laws and practices that cause and perpetuate older people's disadvantage. For example:

- Governments could be required to make legal reforms to outlaw age discrimination in all spheres of life and would have a duty to take steps to eliminate prejudice on the basis of old age.
- A convention would require states to systematically collect data and monitor the situation of older persons.
- A convention could further include a duty of reasonable accommodation to facilitate longer working lives or to combine work with caregiving.
- A convention could address more concretely the digital gap that impedes older people from equally benefiting from lifelong learning and from participating to society on an equal basis with others.

- Binding standards would be expanded with clear and specific obligations for home care provision.
- A convention would encompass a right to receive support in old age, covering not only basic daily activities, but also help in decision-making, and accessing general services, such as health, education, justice and leisure.
- States would have to abolish age limits and extend systems of personalised support, disability allowances and assistive technologies to older persons.

A convention could trigger a number of reforms, by spelling out concrete changes that are necessary to prevent and address human rights breaches in old age.

The experience from the EU in legislating and policymaking in aspects of digitalisation, as well as the creation of age-friendly environments, can positively influence the development of normative standards that set in place the conditions for participation and equal opportunities in old age.

2. BETTER ENTRY POINT FOR PARTICIPATION AND REMEDY

▪ Empowering rights holders and advocates

The value of a human rights convention spans beyond its legal implications. When ageism is internalised, older people's ability and willingness to speak for themselves and report rights violations is considerably reduced. Increasing knowledge of rights and consciousness of wrongdoing could help expand older persons' agency and control over their lives. To the extent that a new convention provides the essential vocabulary to link individual experiences with human rights breaches, it can increase individuals' sense of entitlement, perception of just treatment and feeling of security.

A UN convention can empower older persons to exercise and claim their rights and therefore strengthen the general enforceability of the human rights system.

Encapsulating human rights in old age in a separate document would encourage NGOs working with older people to use the UN system more broadly. Self-advocates and their representative organisations would no longer have to rely on disperse, inconsistent and incomplete standards

to claim rights. A convention could also improve access to effective and enforceable remedies when older people experience age discrimination and other rights violations at national level.

- **Imposing a duty of participation**

By recognizing older persons as agents, instead of dependent or passive beings, human rights conventions create space for rights holders to participate in public affairs and demand their rights.¹ The current framework lacks a general obligation for States to involve older people in the development and implementation of law and policies and in other decision-making processes. Existing human rights bodies and special procedures do not generally include consultations with older persons and their organisations. It is perhaps illustrative that during the first wave of the COVID-19 pandemic [only three EU member states](#) consulted representatives of older persons regarding the application of restrictive measures.

The UN Convention on the Rights of Persons with Disabilities (CRPD) is a very good example of a treaty that empowers persons with disabilities, by giving them and their representative organisations an official role in its implementation. Article 4 creates an obligation for States to include persons with disabilities in all decisions pertaining to their rights. Article 33 requires the involvement of persons with a disability and their advocacy organisations in monitoring the implementation of the convention.

The EU is a fierce defender of the rule of law and a strong supporter of an enabling civic space that allows the meaningful participation of individuals and civil society. A UN convention could incorporate the EU's ideals of active citizenship and equal participation in public and political life.

3. MAINSTREAMING OLDER PEOPLE'S RIGHTS IN THE UN SYSTEM

- **Visibility**

Several UN reports have provided ample evidence of the relative invisibility of older persons within the existing human rights system. The lack of sustained engagement of existing human rights mechanisms with older people – despite increased awareness of the impact of

¹ Freeman, "The value and values of children's rights."

population ageing and the varied rights violations driven by ageism – is a stark proof that the current system is insufficient. This systemic neglect cannot be adequately addressed using the existing human rights treaties.

A new convention would rectify the invisibility of older people in the existing human rights guarantees and ensure a sustained focus.

▪ **Interoperability**

Human rights treaties do not work on their own. When adopted, they become part of the human rights system. Concerted focus on older persons through a UN convention could have a positive impact on other treaty bodies and monitoring mechanisms. It would expand human rights expertise on ageing. The adoption of disability and gender-specific treaties led to an increased awareness among those defending and implementing human rights of the need to take a disability and gender perspective in their work. These treaties also improved the consistency of jurisprudence and norm interpretation by courts and human rights bodies.

A new UN convention could encourage the consistent application of an ageing perspective within the UN system. It could also help better address multiple disadvantages that occur at the intersections of different forms of inequalities.

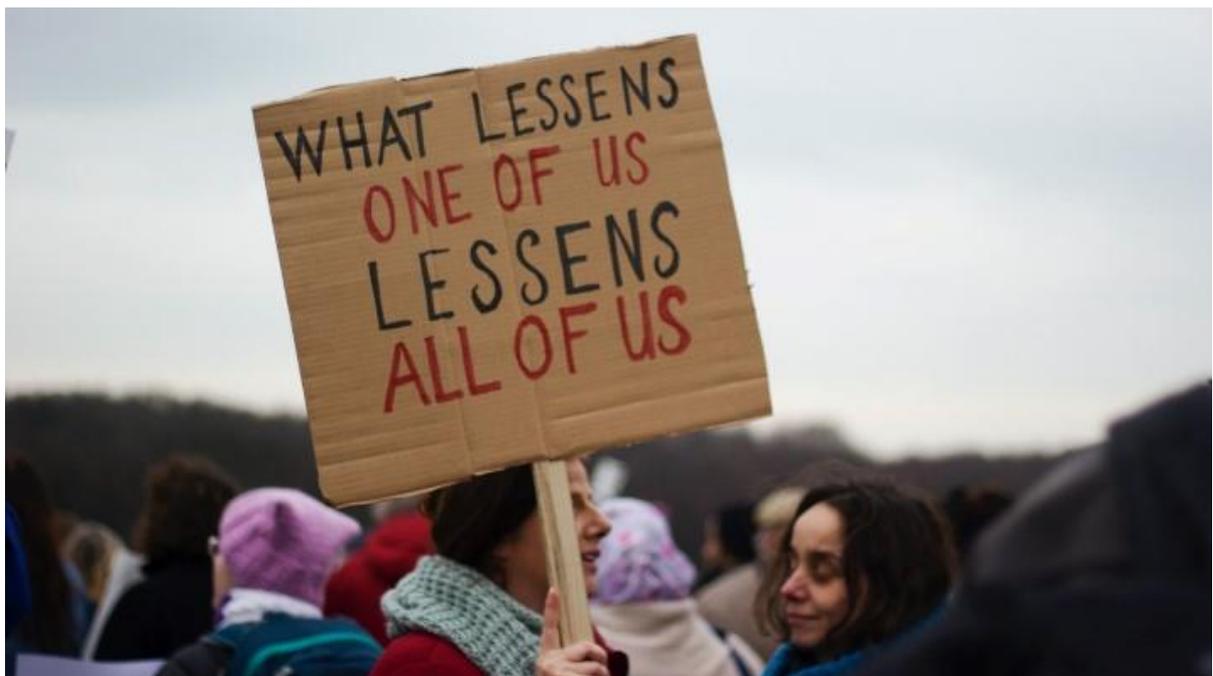
EU's commitment to mainstreaming ageing, to a rights-based approach and to tackling all intersecting forms of discrimination can be amplified in a new convention.

CONCLUSIONS

As the Independent Expert on the Enjoyment of all Human Rights by Older Persons [has put it](#), the pandemic *'has made visible protection gaps that will need to be addressed beyond the response and recovery stages.'* As we rebuild our societies we can choose to do so from a place of equality and dignity.

A new UN convention has a *transformative* potential that can guide future action. It could provide a richer, clearer and more accessible interpretation of universal rights. It could enhance opportunities for individuals and civil society to hold governments to account and access remedy. It could also resolve the extant dispersed and inconsistent engagement with older people's issues by promoting a systematic mainstreaming of human rights in older age.

To date no international human rights treaty has been adopted without the support of European states. The EU and its member states paved the way in outlawing age discrimination and protecting the rights of older people in national and regional instruments. But both in the EU and in other parts of the world older people cannot always rely on regional or national system to protect their rights. We need an international instrument so that all of us - no matter where we live - are entitled to the same rights when we are older. Now is the time for the EU to lead again by supporting a new UN convention for the equal protection of human rights in old age.



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WHAT ARE THE NEXT STEPS?

The 11th session of the UN Open-Ended Working Group on Ageing OEWG is expected to take place from 29th March to 1st April 2021. This is a huge opportunity for the EU and its member states to move from rhetoric to practice.

The EU and its member states should:

- Actively participate in the next session of the UN Open-Ended Working Group on Ageing, including by considering whether a new instrument would make a significant and tangible difference to the lives of older persons.
- Consult older people through their representative organisations, national human rights institutions and other civil society organisations in preparation for the next OEWG session. This will help to understand how older people are being denied their rights; where national, regional and international instruments are silent and deficient; and what is needed to address these violations and gaps.
- Encourage other states to join the OEWG discussions and share national experiences of protecting and promoting the rights of older people.
- Ensure that the Update to the 2012 Analytical Outcome Study on the adequacy of normative standards in international human rights law in relation to older persons, which is currently being finalised by the Office of the High Commissioner for Human Rights (OHCHR), is part of the official programme of the OEWG. This study, which has been repeatedly requested by several member states and the EU provides further analysis of what is missing in the existing normative framework and its implementation, including against the background of the COVID-19 pandemic.
- Support the establishment of a drafting group that will develop proposals for a new convention.
- Ensure that the periodic meetings of the responsible Directors-General of the Member States, announced in the EU trio declaration on ageing in 2020, consider the gaps in the international human rights system for older persons, in order to develop proposals for a new convention.

- As a follow up to the EU Green Paper on Ageing, support the creation of an EU Age Equality Strategy, with a view to paving the way for adoption and ratification by the EU of a future UN convention on the rights of older persons.
- Join the Groups of Friends of Older Persons at the United Nations in Geneva and in New York.
- Actively promote the human rights of older persons in all resolutions of the UN Human Rights Council.
- Support the adoption of UN General Assembly resolution on the impact of COVID-19 on the human rights of older persons and the need for a new UN convention.



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MORE INFORMATION

About AGE Platform Europe

AGE Platform Europe (AGE) is a European network of non-profit organisations of and for people aged 50+, which aims to voice and promote the interests of the 200 million citizens aged 50+ in the European Union (Eurostat, 2018) and to raise awareness on the issues that concern them most.

www.age-platform.eu

Contact information

For more information about AGE work on human rights and this publication, please contact Nena Georgantzi, Policy Coordinator on Human Rights & Non-Discrimination, nenageorgantzi@age-platform.eu

Additional resources

- [AGE Human Rights Manifesto](#)
- [AGE Guidelines on a rights-based approach to ageing](#)
- [AGE position on Structural Ageism](#)
- [Joint Discussion Paper - Time for a UN convention on the rights of older persons](#)
- [Helpage International: Five reasons for a UN convention](#)
- [Global Alliance for the Rights of Older People](#)
- [Ageing Equal campaign against ageism](#)

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