

Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Right to work and access to the labor market

Definition

1. How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?

Scope of the right

2. What are the key normative elements of the right to work and access to the labor market for older persons? Please provide references to existing standards on elements such as:

- a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to employment.
- b) Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.
- c) Provision of reasonable accommodation to older persons in the workplace.
- d) Affirmative action programs to promote the hiring of older persons.
- e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.
- f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.
- g) Promotion of older persons' self-employment and entrepreneurship.
- h) Favorable, fair, and safe working conditions when undertaking formal, informal or unenumerated work.
- i) Access to prompt remedies and redress when older persons' right to work and access to the labor market is denied.

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labor market for older persons, regarding the normative elements as provided above?

Special considerations

4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?
5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labour market for older persons?

Implementation

6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to work and access to the labor market for older persons?

- **Older workers are an asset to societies, and should be supported to remain economically active if they want to do so, while protecting them from having to work beyond their limits.**
- **Rural and remote areas in many countries experience more pronounced population ageing than urban areas, with mainly youth leaving to find work in cities.** ¹ The latter, together with widespread informality and weak social protection systems, often means that older people, especially those engaged in subsistence agriculture, cannot afford to stop working. Indeed, agriculture continues to be the most important source of employment for older people in low- and middle-income countries. In both Asia and sub-Saharan Africa, agriculture is the primary source of income for more than 70 per cent of economically active people over 60.² Also in Latin America, 41.2 percent of employed older persons aged 65 or over work in the agricultural sector, with the elderly labour participation rate being much higher in rural areas than urban ones.³
- **As the above shows, many older people continue to make significant contributions as income-earners, providers of care, and sources of knowledge and experience. Yet, they are often particularly vulnerable to poverty, food insecurity, and social exclusion.** Older women in particular spend more than four hours a day on unpaid **domestic** work – more than double the time older men spend on the same activities.⁴ **Moreover, older women in low and middle-income countries often have no choice in doing this work, and support structures such as social welfare, free healthcare and pensions are rarely available to them.** The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Art. 2, points to the need to pay particular attention to the rights and special needs of peasants and other people working in rural areas, *including older persons*, taking into account the need to address multiple forms of discrimination.⁵
- **To facilitate generational turnover, the United Nations Global Action Plan of the Decade Of Family Farming 2019-2028 emphasizes the importance of providing, elderly farmers with necessary measures and social protection services** supporting their retirement and allowing them to grow old with security and dignity. Intergenerational collaboration, catalyzing the exchange and combination of generation-specific knowledge and skills can be instrumental.⁶ **The experience of the European Union (EU) is interesting in this regard,** given a steadily ageing population, and the fact that one third of farmers are 65 or older and only 5.1 percent below 35. The assessment of EU past practices encouraging older farmers to retire by passing on their farm to a successor highlighted the need to consider the complex nature of the farm succession process, recommending and the need for any policy for structural reform in agriculture to be accompanied by a comprehensive set of interventions to deal with the personal and social loss an older farmer may experience in transferring the family farm, while giving greater recognition to the older generation's store of knowledge which would be of value to the succeeding generation.⁷
- The measures that States should undertake therefore include:
 - **basic pensions for everyone, in line with the ILO's Social Protection Floors Recommendation, 2012 (No. 202)** for member States to establish and maintain, as a priority, a nationally defined set of basic social security guarantees provided to all residents and all children, ensuring that, over the life cycle, all in need have access to essential health care and to basic income security;

¹ UNECE Policy Brief on Ageing No. 18 March 2017 https://unece.org/fileadmin/DAM/pau/age/Policy_briefs/ECE-WG1-25.pdf FAO and BSF, Population ageing in Malawi: understanding challenges, responding to opportunities: Proceedings of the meeting held in Lilongwe, Malawi on 28-29 November 2007 (FAO-Rome, 2008). <https://www.fao.org/3/ai581e/ai581e00.pdf>

² HelpAge International. The ageing of rural populations: evidence on older farmers in low- and middle-income countries <https://www.helpage.org/silo/files/the-ageing-of-rural-populations-evidence-on-older-farmers-in-low-and-middle-income-countries.pdf>

³ 2018, ECLAC / ILO Employment Situation in Latin America and the Caribbean May 2018 Number 18 Labour market participation of older persons: needs and options https://repositorio.cepal.org/bitstream/handle/11362/43604/1/S1800397_en.pdf

⁴ ODI, 2018. Between work and care Older women's economic empowerment

⁵ UN, 2018. United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas <https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Declaration%20on%20the%20rights%20of%20peasants.pdf>

⁶ United Nations Decade Of Family Farming 2019-2028 Global Action Plan <https://www.fao.org/3/ca4672en/CA4672EN.pdf>

⁷ Marie-Laure Augère-Granier and James McEldowney, 2020. Older people in the European Union's rural areas Issues and challenges [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659403/EPRS_IDA\(2020\)659403_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659403/EPRS_IDA(2020)659403_EN.pdf)

- **policy and programmatic interventions that address the complex nature of the farm succession process, including its emotional and social dimensions;**
- **recognition of unpaid work often carried out by older women;**
- **interventions to ensure that older persons age successfully** and can bring their contribution to economic and social life;
- **addressing age discrimination in employment** (ex. in recruitment, promotion and training) by taking measures, such as legislation preventing age discrimination, public-awareness campaigns, and encouraging good practices by employers in managing an age-diverse workforce (ex. initiatives that promote sharing of knowledge across age groups).

Access to justice

Definition

1. What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

Scope of the right

2. What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements:

- (a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;
- (b) Elimination of the influence of ageist stereotypes at any stage of judicial or non-judicial proceedings, including the award of damages or compensation;
- (c) Access to timely legal proceedings, especially in situations of immediacy;
- (d) Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons;
- (e) Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others ;
- (f) Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners;
- (g) Access to reasonable accommodation in all legal and administrative proceedings at any stage to facilitate older persons' effective role as direct or indirect participants in justice proceedings;
- (h) Adequate and appropriate training to all those working in the administration of justice and law enforcement, including the judiciary, police and prison staff, on the rights of older persons;
- (i) Accommodation of the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community;
- (j) Equal access of older prisoners to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population; and
- (k) Access to prompt remedies and redress when older persons' right to access justice is denied.

State obligations

3. What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the right?

Special considerations

4. What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?

Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons?

- Older persons face disproportionate cases of age based discrimination. In particular, the COVID-19 pandemic has shed light on reports of abuse and neglect of older persons, particularly in care institutions and the community.⁸
- Age, income, gender and geographic inequalities often interconnect, making access to justice particularly difficult for older people that live in rural communities and are poor, due to relate costs, lengthy legal processes, which may prove fatal for older persons, mobility constraints and remoteness, illiteracy and low awareness about existing provisions. **In extreme cases, especially when age-based discrimination is combined with factors like misogyny, poverty, resource scarcity, and poor understanding of age-related diseases (e.g. dementia, Alzheimer's, or Parkinson's disease), older people (and women in particular) can be exposed to such drastic forms of injustice as witchcraft accusations, leading to abuse and violence, sometimes with fatal consequences.**¹
- The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas includes specific provisions related to attention to older people (Art. 2) and access to justice (Article 12). In particular Art. 12 establishes that “1. *Peasants and other people working in rural areas have the right to effective and non-discriminatory access to justice, including access to fair procedures for the resolution of disputes and to effective remedies for all infringements of their human rights. Such decisions shall give due consideration to their customs, traditions, rules and legal systems in conformity with relevant obligations under international human rights law.* 2. *States shall provide for non-discriminatory access, through impartial and competent judicial and administrative bodies, to timely, affordable and effective means of resolving disputes in the language of the persons concerned, and shall provide effective and prompt remedies, which may include a right of appeal, restitution, indemnity, compensation and reparation.* 3. *Peasants and other people working in rural areas have the right to legal assistance. States shall consider additional measures, including legal aid, to support peasants and other people working in rural areas who would otherwise not have access to administrative and judicial services.* 4. *States shall consider measures to strengthen relevant national institutions for the promotion and protection of all human rights, including the rights described in the present Declaration.* 5. *States shall provide peasants and other people working in rural areas with effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating their human rights, arbitrarily dispossessing them of their land and natural resources or of depriving them of their means of subsistence and integrity, and for any form of forced sedentarization or population displacement.* “

⁸ World Elder Abuse Awareness Day: Access to Justice <https://www.un.org/development/desa/ageing/world-elder-abuse-awareness-day/2021-2.html>

<https://www.helpage.org/newsroom/latest-news/older-people-must-be-protected-from-witchcraft-accusations/>