

Open-Ended Working Group on Ageing – Guiding Questions

1. Equality and Non-Discrimination

- 1.1.** Does your country's constitution and/or legislation (a) guarantee equality explicitly for older persons or people of all ages and (b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

Reference is made to the relevant information provided in "Employment and social protection in the new demographic context, Report IV, International Labour Conference 102nd session, ILO, Geneva, 2013, paragraphs 243-246":

The ILO has a wide range of Conventions and Recommendations relevant in the context of demographic change and that can be used to guide policy decisions and reform processes. These instruments are also safeguards for workers and their families. As such, they have an essential role to play in achieving the public consensus needed to adopt and implement national policy frameworks responding to the new demographic context.

The consequences of ageing societies on the world of work and social protection mechanisms have most directly and specifically been addressed in the Older Workers Recommendation, 1980 (No. 162). Recommendation No. 162 is structured around the main subject matters considered relevant for effectively addressing the challenges that arise in this respect: (i) equality of opportunity and treatment; (ii) employment protection measures; and (iii) preparation for, and access to, retirement. These issues are also dealt with by a number of other ILO standards which fall within the following two categories: equality and non-discrimination in employment and occupation; social security, employment and skills.

The question of age is to be analysed from the standpoint of promoting equality of opportunity and treatment. Recommendation No. 162 provides that employment problems of older workers should be dealt with in the context of an overall and well- balanced strategy for full employment. Each country should take measures for the prevention of discrimination in employment and occupation with regard to older workers in the framework of a national policy to promote equality of opportunity and treatment for workers whatever their age.

While the ILO fundamental Discrimination (Employment and Occupation) Convention, 1958 (No. 111), does not include age among the enumerated grounds of discrimination, it also provides for the possibility to determine additional grounds of discrimination, such as age, after consultation with representative employers' and workers' organizations, and with other appropriate bodies. Once considered by the legislation or by other means, as an additional prohibited ground, any distinction, exclusion or preference made on the basis of age will be deemed to be discrimination, unless age is considered an inherent requirement for a particular job (Article 1(2) of Convention No. 111). In addition, to address de facto inequalities that may exist for older or younger workers, some countries have provided for special measures, including affirmative action in the Constitution or labour legislation, in accordance with Article 5 of Convention No. 111. The Termination of Employment Recommendation, 1982 (No. 166), states that age should not constitute a valid reason for termination, subject to national law and practice regarding retirement.

1.2. Does your country produce information about discrimination against older persons in the following or other areas? If so, what are the main findings?

1.2.1. Social protection

The application of ILO standards is supervised by the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards, which meet periodically to assess the conformity of ILO member States law and practice with these standards. The jurisprudence and reports (e.g. General Surveys) of the supervisory bodies provides a wealth of information on these issues and allows to identify trends at country level.

In recent years, national legislation has clearly followed the trend of including a broad range of prohibited grounds of discrimination, including real or perceived age, health, disability, HIV status and AIDS, employment status, nationality, sexual orientation and gender identity. Over the past 15 years, there has been steady and rapid progress in the adoption of legal provisions prohibiting discrimination on the basis of age. While a number of countries have included “age” in their national constitutions, in most cases, the ground of age has been included in general labour legislation or in specific anti-discrimination or equality acts. In some countries, legislation specifically provides that awards and enterprise agreements must include terms that prohibit discrimination based on age. It is important to stress in this respect that human resources development policies and tools, such as those envisaged by relevant ILO instruments, are complementary to the prohibition of discrimination based on age in order to increase the employability of older workers. In practice, discrimination on the basis of age is also observed in relation to the compulsory retirement age and the conditions of employment of elderly and of young workers. The current trend in most industrialized countries is towards a more flexible approach to the compulsory retirement age, as opposed to cases whereby employment may lawfully be terminated upon the reaching of retirement age. (Employment and social protection in the new demographic context, Report IV, International Labour Conference 102nd session, ILO, Geneva, 2013, paragraphs 247)

1.2.2. Health care

The ILO does not develop systematically information on discrimination against older persons. However, selected reports clearly show significant discrimination of older persons’ long-term care needs, such as the report: “Long-term care protection for older persons – A review of coverage deficits in 46 countries” by Xenia Scheil-Adlung, Geneva, 2015 (http://www.ilo.org/secsoc/information-resources/publications-and-tools/Workingpapers/WCMS_407620/lang--en/index.htm).

The study reveals that globally, the majority of countries do not provide any LTC protection. More than 48 per cent of the world’s population is not covered by any national legislation. Another 46.3 per cent of the global population is largely excluded from coverage due to narrow means-testing regulations that force persons aged 65+ in need of LTC to become poor before they become eligible for LTC services. Only 5.6 per cent of the global population lives in countries that provide LTC coverage based on national legislation to the whole population. Most seriously concerned by the public neglect of LTC needs for older persons are women.

Public underfunding and high OOP jeopardize access to LTC for the majority of the global population aged 65+:

- Globally, the average public expenditure for LTC is less than 1 per cent of GDP:
 - In Africa, most countries spend 0 per cent of GDP on LTC – only in South Africa public expenditure of 0.2 per cent of GDP is observed.

- In the Americas, expenditure varies between 1.2 (USA), 0.6 (Canada) and 0 per cent of GDP in countries of Latin America.
 - In Asia and the Pacific, highest amounts in per cent of GDP are spent on LTC in New Zealand (1.3) and lowest in Australia (0), while countries such as China, India and Indonesia spend around 0.1 per cent of GDP on LTC.
 - In Europe, average public expenditure between 2006 and 2010 was globally highest reaching more than 2 per cent in Denmark, the Netherlands and Norway whereas lowest public expenditure occurred with 0 per cent in Turkey and the Slovak Republic.
- In all countries, the majority of persons aged 65+ in need of LTC is challenged by high, often impoverishing out-of-pocket payments (OOP):
- In South Africa, the share of OOP for home-based LTC amounts to 100 per cent of total expenditure given the absence of public home care services.
 - In Thailand, OOP is estimated between 80 and 100 per cent of total LTC expenditure.
 - In Argentina, 60-80 of total LTC expenditure are OOP and in Turkey, 100 per cent of total LTC expenditure is OOP.

Further, critical shortages of LTC workers make quality services unavailable for large parts of the global population aged 65 and over:

- Due to a global shortfall of 13.6 million formally employed LTC workers in 2015, major gaps in the availability of services for older persons are observed. Filling these gaps would create employment – particularly for women and in rural areas where gaps are most severe – and provide access to urgently needed services:
- Most severe shortages are found in Asia and the Pacific where 8.2 million LTC workers are missing.
 - In Europe, 2.3 million formal LTC workers are needed.
 - In the Americas, 1.6 million LTC workers are required.
 - In Africa, to 1.5 million LTC workers are needed.
- In all regions, the absence of formal LTC workers results in the exclusion of large parts of the older population from quality services:
- In Africa, more than 92 per cent of the older population is excluded.
 - In Asia and the Pacific, 65 per cent of the population aged 65+ remains without formal services.
 - In the Americas, some 15 per cent of the older population does not receive quality services.
 - In Europe, about 30 per cent of the older population is concerned. However, national figures vary significantly, e.g. in Portugal more than 90 per cent of the population is excluded while the related percentage in Estonia is 0 per cent.
- The number of *informal LTC workers* – often older unpaid female family members – is by far exceeding that of the formal LTC workers who provide

the bulk of LTC. Per 100 persons aged 65+ the following numbers of informal and formal LTC workers are observed in selected countries:

- In the USA, 123 informal LTC workers (head count/HC) exist compared to 6.4 formal LTC workers (full time/FTE).
- In Australia, as much as 83.8 informal LTC workers (HC) support 4.4 formal LTC workers (FTE).
- In Norway, 87.2 informal LTC workers (HC) back up 17.1 formal LTC workers (FTE).

Based on the evidence provided, the study finds that the disregard of LTC needs points to age and gender discrimination:

- Age discrimination with a systemic nature is expressed in:
 - The ignorance of (human) rights to social security and health of older persons in need of LTC.
 - Wide gaps of social protection coverage in LTC, LTC infrastructure, funding and the formal LTC workforce.
 - Unequal treatment of older persons in need of LTC compared to younger persons with similar needs such as health care.
 - The irrational fear that LTC will incur extremely high public expenditure despite the fact that only a small group of older persons is concerned and current expenditure is globally extremely low.
- Gender discrimination identified in the context of LTC relates to societal expectations and patriarchal family structures. They require from female family members to be available for “family work” while ignoring their own needs in terms of income, social protection and career. As a result, the bulk of LTC services are delivered by female family members – which are in some countries even forced by law to do so – without receiving any income compensation or a minimum of social protection coverage. Thus, informal care giving has the potential to aggravate existing gender gaps.
- The observed discrimination in LTC is rarely resulting in public or societal criticism and frequently ageism is not even considered as a serious concern. However, the study shows that it has the same social and economic impacts than other forms of discrimination such as impoverishment, exclusion and sometimes even abuse and violence in LTC environments. Further, preventive care is hardly being provided as the potentials of capacity improvements of older persons are often neglected and positive developments that can be achieved by providing adequate quality LTC services are underreported in public debates.

The study suggests addressing the above issues and creating age inclusive societies by three milestones towards resilient LTC protection for all. They focus on:

- recognizing LTC as a right in its own, guaranteeing universal LTC protection and providing access to quality services and cash benefits estimated at 1,461.8 PPP\$ per person aged 65+ and year;
- addressing the workforce shortages by employing at least 4.2 formal LTC workers per 100 persons aged 65 or over in jobs providing decent working conditions;

- making LTC a top priority on the policy agenda of all countries and empowering older persons in need of LTC.

1.3. Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas?

Health care: Availability of, access to and quality of health care services

See reply under 1.2.2

1.4. Are there any areas where differential treatment based on old age is explicitly justified?

1.4.1. Access to goods, mandatory age of retirement, age limits in financial services and products aged-based benefits

The reply is drawn from Employment and social protection in the new demographic context, Report IV, International Labour Conference 102nd session, ILO, Geneva, 2013, paragraphs 248-253:

The ILO social security standards adopted since the 1950s, and most particularly the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the recent Social Protection Floors Recommendation, 2012 (No. 202), provide an international reference framework as to the range and levels of social security benefits that are necessary and adequate for ensuring income maintenance and income security, as well as access to health care throughout the life cycle, including in active and in old age.

Social security plays a key role in enabling older persons, both in the case where they are in employment and in search of employment, to maintain their employability and in this respect is widely recognized as a prerequisite for active ageing. This concern is fully taken into account in the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and its accompanying Recommendation No. 176, as well as in the Human Resources Development Recommendation, 2004 (No.195). Convention No. 168 is based on the recognition of the key role of employment promotion in coping with demographic pressures on social security systems. Sustainable economic growth and high rates of labour market participation by all age groups are a precondition for demographic pressures on social security systems to be manageable in the future. Recommendation No. 202, by promoting coherence between social security policies and other public policies (for example, policies that enhance vocational training, skills and employability, that reduce precariousness and that promote secure work), and complementarily with active labour market policies (including vocational training or other measures) also provides valuable guidance in this regard.

A key instrument of particular relevance for countries wishing to develop employment policies responding to their needs, including in the context of ageing, is the Employment Policy Convention, 1964 (No. 122). Convention No. 122, a governance Convention, serves as a blueprint for member States as they formulate active employment policies and implement labour market measures that may target vulnerable categories of workers such as older workers. The Human Resources Development Convention, 1975 (No. 142), as complemented by the Human Resources Development Recommendation, 2004 (No. 195), also plays an important role in the successful design and delivery of effective training policies and programmes targeted at older workers. Convention No. 142 specifically calls on countries to gradually extend, adapt and harmonize vocational training systems to meet the needs throughout life of both young persons and adults at all levels of skill and responsibility. The Employment Relationship Recommendation, 2006 (No. 198), sets out to provide

protection to vulnerable workers who are uncertain about the existence of an employment relationship, including women workers, young workers, older workers and workers in the informal economy. Other relevant instruments to promote employment for older workers include: the Employment Service Convention, 1948 (No. 88), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); and the Private Employment Agencies Convention, 1997 (No. 181).

The transition between active life and retirement should be progressive and allow for voluntary retirement and coupled with provisions for making the pensionable age flexible, thereby giving greater freedom to persons to decide upon the age at which they wish to stop working. In a number of countries this was done through the introduction of flexible retirement arrangements in the legislation, for example, voluntary early retirement, deferred retirement or progressive retirement, with greater flexibility as to the pensionable age according to various specific criteria designed to take into account the actual situation of those concerned, for example, arduous or unhealthy occupations, long-term unemployment.

Another important social policy challenge of ageing societies is to secure an adequate level of income for all persons in old-age without overstretching the capacities of younger generations. ILO social security standards, and more precisely Convention No. 102, Convention No. 128 and Recommendation No. 131, make provision for the payment of pensions, that is long-term benefits, in the case of old-age, disability and death of the breadwinner, at guaranteed levels, upon completion of a qualifying period and to be regularly adjusted to maintain pensioners' purchasing power. Recommendation No. 202 completes this framework by calling for the guarantee of basic income security for all persons in old-age. It thus acts as a safeguard against poverty, vulnerability and social exclusion in old-age, for persons who are neither covered by contributory pension schemes nor entitled to a pension under these schemes. It is also for pensioners whose benefits are affected by financial losses of the fund, whose pensions are not regularly adjusted to changes in the costs of living, or whose pensions are simply inadequate to secure effective access to necessary goods and services and allow life in dignity. ILO social security standards thus provide a comprehensive set of references and a framework for the establishment, development and maintenance of old-age pension schemes at national level.

In view of the financing and sustainability challenge faced by social security systems in the context of demographic change, the State has a vital role to play in forecasting in the long term the balance between resources and expenditure in order to guarantee that institutions meet their obligations towards persons in old age. The overall and primary responsibility of the State established by ILO social security Conventions and strongly reaffirmed recently by Recommendation No. 202, is no doubt to play an important role in how governments are in the future held accountable for the sustainability of national social security systems in view of, inter alia, demographic changes.