X SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING: Social protection and social security (including social protection floors)

Submission by the ILO Social Protection Department

National legal framework

1. What are the legal provisions in your country that recognizes the right to social security and social protection, including non-contributory and contributory old-age benefits? Do they have a constitutional, legislative or executive foundation?

As a standard-setting agency, the ILO has adopted numerous Conventions and Recommendations relevant to old-age benefits. In fact, the normative body of standards developed by the tripartite constituents of the ILO provide concrete guidance for the realisation of the human right of older persons to social security and an adequate standard of living to support their health and well-being, including medical care and necessary social services, are laid down in the major international human rights instruments, the Universal Declaration of Human Rights (UDHR), 1948, and (in more general terms) the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

Of this body of international social security instruments, the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Old-Age, Invalidity and Survivors' Benefits Convention, 1967 (No. 128), and its accompanying Recommendation No. 131, and the Social Protection Floors Recommendation, 2012 (No.202), provide an international reference framework setting out 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, in old age. The extension of coverage to all older persons is an underlying objective of these standards, with the aim of achieving universality of protection, as explicitly stated in Recommendation No. 202.

Conventions Nos 102 and 128 and Recommendation No. 131 make provision for the payment of pensions in old age, at guaranteed levels, upon completion of a qualifying period, and their regular adjustment to maintain pensioners' purchasing power. More particularly, Conventions Nos 102 and 128 envisage the provision of income security to people who have reached pensionable age through earnings-related contributory pensions (guaranteeing minimum benefit levels, or replacement rates corresponding to a prescribed proportion of an individual's past earnings – in particular for those with lower earnings) and/or by flat-rate non-contributory pensions which can be either universal or means-tested. The guaranteed minimum levels for the latter should be a prescribed proportion of the average earnings of a typical unskilled worker, but the "total of the benefit and other available means ... shall be sufficient to maintain the family of the beneficiary in health and decency" (Convention No. 102, Art. 67(a)).

Recommendation No. 202 completes this framework by calling for the guarantee of basic income security to all persons in old age, prioritizing those in need and those not covered by existing arrangements. Such a guarantee would act as a safeguard against poverty, vulnerability and social exclusion in old age for people not covered by contributory pension schemes. It is also of high relevance to pensioners whose benefits are affected by the financial losses suffered by pension funds, 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 systems at national level.

An important social policy challenge facing ageing societies is to secure an adequate level of income for all people in old age without overstretching the capacities of younger generations. 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 the long-term balance between resources and expenditure in order to guarantee that institutions will meet their obligations towards older persons. The principle in ILO social security standards, strongly reaffirmed recently by Recommendation No. 202, of the overall and primary responsibility of the State in this respect will undoubtedly play an important role in how future governments are held accountable for the sustainability of national social security systems in view of, among other factors, demographic change.

In line with the Constitution, the ILO's Committee of Experts on the Application of Conventions and Recommendations recently published an in-depth General Survey on member States' national law and practice, on the application of the Social Protection Floors Recommendation, 2012 (No. 202). This Recommendation, adopted quasi unanimously (one abstention) by the governments, as well as employers' and workers' organisations of the ILO's now 187 member States, guides countries in building nationally-defined social protection floors, as part of their comprehensive social protection systems. These social protection floors should guarantee at least a basic level of social security to all, ensuring at least effective access to essential health care and basic income security throughout the life course, including for older persons.

This report has been established mainly on the basis of reports received from member States and information transmitted by employers' and workers' organizations. These responses allowed the Committee of Experts to examine the impact of Conventions and Recommendations, to analyse the difficulties indicated by governments as impeding the application of the Recommendation, and to identify means of overcoming these obstacles. Relevant chapters for the discussion of the Open-ended working group on ageing include in particular Chapter 5 on essential health care and Chapter 8 on basic income security for older persons.

This report is available here:

• ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/--ed-norm/---relconf/documents/meetingdocument/wcms-673680.pdf.

Prior to this report, the Committee of Experts on the Application of Conventions and Recommendations had also published an in-depth General Survey on member States' national law and practice, on the application of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

• ILO (2011) Social Security and the Rule of Law: General Survey concerning social security instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization (Report III (Part 1B)). Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms 152602.pdf.

In addition, the following publication can be useful:

• ILO (2017) Building social protection systems: International standards and human rights instruments. Geneva: International Labour Office. Available at: http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=54434.

Global trends as regards the mechanisms providing social protection for older persons, legal and effective coverage of old-age benefits, expenditure on social protection for older persons, the question of adequacy and challenges can be found in the following publications:

- ILO (2017b) World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals. Geneva: International Labour Office. Available at: http://www.social-protection.org/gimi/gess/ShowWiki.action?id=594.
- ILO (2018) Social protection for older persons: Policy trends and statistics 2017-19 /
 International Labour Office, Social Protection Department. Available at:
 https://www.ilo.org/wcmsp5/groups/public/---ed-protect/----soc-sec/documents/publication/wcms-645692.pdf

Specific reference can also be made to specific policy trends concerning old-age pension schemes, notably the reversal the privatisation of pension schemes:

 ILO (2018) Reversing Pension Privatizations: Rebuilding public pension systems in Eastern Europe and Latin America /International Labour Office – Geneva, Available at: https://www.social-protection.org/gimi/RessourcePDF.action?id=55301

With particular reference to extending the coverage of old-age benefit in particular in the context of non-standards forms of employment and in the future of work, consultation can be made of:

- ILO (2016) Non-standard forms of employment: understanding challenges, shaping prospects. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms 534326.pdf.
- Behrendt C and Nguyen QA (2018) Innovative approaches for ensuring universal social protection for the future of work. ILO Future of Work Research Paper Series 1. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_629864.pdf

Questions concerning inequalities and gender gaps and the link with social protection can be specifically found:

- ILO (2016) Women at Work: Trends 2016. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/----publ/documents/publication/wcms 457317.pdf.
- ILO (2017) Women in Non-Standard Employment. INWORK Issue Brief 9. Geneva: International Labour Office. Available at: http://ilo.ch/wcmsp5/groups/public/---ed-protect/---protrav/---travail/documents/publication/wcms-556160.pdf.
- ILO (2017b) World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals. Geneva: International Labour Office. Available at: http://www.social-protection.org/gimi/gess/ShowWiki.action?id=594.
- ILO (2019a) A quantum leap for gender equality: For a better future of work for all. Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms 674831.pdf.

Availability

- 2. What steps have been taken to guarantee universal coverage, ensuring that every older person has access to social security and social protection schemes including non-contributory, contributory and survivor old-age pensions, to ensure an adequate, standard of living in older age?
- 3. What steps have been taken to ensure that every older person has access to social security and social protection schemes which guarantee them access to adequate and affordable health and care and support services for independent living in older age?

Some considerations as regards the availability of the social security system, in line with the international human rights and social security framework, include:

- The right to social security requires, for its implementation, that a system, whether composed of
 a single scheme or variety of schemes, is available and in place to ensure that benefits are
 provided for the relevant social risks and contingencies, the provisions of in particular R202 and
 C102 provide concrete guidance in establishing social protection systems including social
 protection floors;
- The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system, these principles, in particular the primary and overall responsibility of the State are also provided for in particular for the due provision of benefits and for the proper administration of the institutions and services concerned under R202 and C102;
- The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations.

In this regard, the following report can be consulted:

- ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/------ed-norm/---relconf/documents/meetingdocument/wcms-673680.pdf. (in particular Chapter 3 and Part III)
- ILO (2011): Social security and the rule of law, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, Available at: https://www.ilo.org/global/standards/WCMS 152909/lang--en/index.htm (in particular part II)

Adequacy

4. What steps have been taken to ensure the levels of social security and social protection payments are adequate for older persons to have access to an adequate standard of living, including adequate access to health care and social assistance?

Some considerations as regards the adequacy of social security benefits in line with the international human rights and social security framework, include:

- Benefits, whether in cash or in kind, must be adequate in amount and duration in order
 that everyone may realize his or her rights to (...) an adequate standard of living (...) as
 contained in article (...) 11 the Covenant. In this regard reference can be made to the
 benchmarks established under ILO social security standards. In particular, ILO social
 security standards provide a framework of internationally accepted minimum standards
 with regard to social protection systems. There are many ways to assess adequacy. For
 social protection floors, adequacy means that the basic social security guarantees should
 prevent or at least alleviate poverty, vulnerability, and social exclusion, and allow life in
 dignity
- States parties must also pay full respect to the principle of human dignity contained in the
 preamble of the Covenant, and the principle of non-discrimination, so as to avoid any
 adverse effect on the levels of benefits and the form in which they are provided, these
 core principles been reiterated in the body of instruments adopted by the ILO and notably
 R202
- Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their human rights, (see in this regard provisions of R202)

In this regard, reference can be further made to:

ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at:
 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms 673680.pdf. (in particular Chapters 4, 5 and 8)

Accessibility

- 5. What steps have been taken to ensure older persons have adequate and accessible information on available social security and social protection schemes and how to claim their entitlements?
- 6. The design and implementation of normative and political framework related to social security and social protection benefits included an effective and meaningful participation of older persons?

Some considerations as regards the accessibility of social security benefits in line with the international human rights and social security framework, include

• Coverage: All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited under the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary. Universal Social Protection is central to the 2030 Agenda for sustainable development and in particular target 1.3 "implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and vulnerable". This echoes the provisions of R202 which call on Member States to ensure at least a basic level of social security for older persons and essential health care through nationally-defined social protection floors

- Eligibility: Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law; ILO standards establish internationally agreed qualifying conditions as regards access to medical care and old-age benefits (in particular reference can be made to R202 and C102 but also C128)
- Participation and information: Beneficiaries of social security schemes must be able to
 participate in the administration of the social security system. The system should be
 established under national law and ensure the right of individuals and organizations to
 seek, receive and impart information on all social security entitlements in a clear and
 transparent manner; in this regard, tripartite administration and consultations with
 relevant stakeholders are key principles upheld in ILO Standards;
- Physical access: Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant.

Please consult:

- ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms 673680.pdf.
- ILO (2011): Social security and the rule of law, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, Available at: https://www.ilo.org/global/standards/WCMS 152909/lang--en/index.htm

Equality and non-discrimination

7. Which are the measures adopted to ensure equitable access by older persons to social security and social protection, paying special attention to groups in vulnerable situation?

Please consult:

- ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at:
 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms 673680.pdf.
- ILO (2011): Social security and the rule of law, General Survey concerning social security
 instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report of
 the Committee of Experts on the Application of Conventions and Recommendations, Report III
 (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, Available at:
 https://www.ilo.org/global/standards/WCMS 152909/lang--en/index.htm

• ILO (2017b) World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals. Geneva: International Labour Office. Available at: http://www.social-protection.org/gimi/gess/ShowWiki.action?id=594. (particularly chapters 4, 5 and 7)

Accountability

- 8. What mechanisms are in place to ensure social security and social protection schemes are effective and accountable?
- 9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to social security and social protection?

Accountability mechanisms are central to strengthening and securing the implementation of old-age benefits including through a rights based approach. The right of the beneficiary to complain and appeal is enshrined in ILO Standards (see for example, Recommendation No. 202, para. 7).

Reference can be made in this regard to:

- ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at:
 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms 673680.pdf.. (in particular Chapter 3)
- ILO (2011): Social security and the rule of law, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, Available at: https://www.ilo.org/global/standards/WCMS_152909/lang--en/index.htm (in particular Chapter 3)

Relevant resources

Behrendt C and Nguyen QA (2018) Innovative approaches for ensuring universal social protection for the future of work. ILO Future of Work Research Paper Series 1. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms 629864.pdf.

Behrendt C, Saint-Pierre Guilbault E, Stern Plaza M, et al. (2017) Implementing the principles of Social Protection Floors Recommendation. In: Dijkhoff T and Mpedi LG (eds) Recommendation on Social

- Protection Floors: Basic Principles for Innovative Solutions. Alphen aan den Rijn: Kluwer, pp. 41–70.
- Global Commission for the Future of Work (2019) *Work for a brighter future*. Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf.
- ILO (2011): Social security and the rule of law, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, Available at: https://www.ilo.org/global/standards/WCMS 152909/lang--en/index.htm
- ILO (2016) Non-standard forms of employment: understanding challenges, shaping prospects. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms 534326.pdf.
- ILO (2016) Women at Work: Trends 2016. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms 457317.pdf.
- ILO (2017) Women in Non-Standard Employment. INWORK Issue Brief 9. Geneva: International Labour Office. Available at: http://ilo.ch/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms 556160.pdf.
- ILO (2017a) *Building social protection systems: International standards and human rights instruments.*Geneva: International Labour Office. Available at: http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceld=54434.
- ILO (2017b) World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals. Geneva: International Labour Office. Available at: http://www.social-protection.org/gimi/gess/ShowWiki.action?id=594.
- ILO (2018) Reversing Pension Privatizations: Rebuilding public pension systems in Eastern Europe and Latin America /International Labour Office Geneva, Available at: https://www.social-protection.org/gimi/RessourcePDF.action?id=55301
- ILO (2018) Innovative approaches for ensuring universal social protection for the future of work. Issue Brief Prepared for the 2nd Meeting of the Global Commission on the Future of Work 12. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms 618176.pdf.
- ILO (2018) Women and men in the informal economy: a statistical picture. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed-emp/documents/publication/wcms-626831.pdf.
- ILO (2018) Social protection for older persons: Policy trends and statistics 2017-19 / International Labour Office, Social Protection Department. Available at:

 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_645692.pdf

- ILO (2019a) A quantum leap for gender equality: For a better future of work for all. Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms 674831.pdf.
- ILO (2019b) Universal social protection for human dignity, sustainable development and social justice:

 General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva:
 International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed norm/---relconf/documents/meetingdocument/wcms 673680.pdf.
- ILO and IDA (2019) Joint statement: Towards inclusive social protection systems supporting the full and effective participation of persons with disabilities. Geneva: International Labour Office and International Disability Alliance. Available at: https://www.social-protection.org/gimi/RessourcePDF.action?id=55473.
- Sepúlveda Carmona M (2018) *Is biometric technology in social protection programmes illegal or arbitrary? An analysis of privacy and data protection.* Extension of Social Security (ESS) Paper Series 59. Geneva: ILO and Development Pathways. Available at: http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=55133.

Relevant web platforms that include additional material: www.social-protection.org www.socialprotection-humanrights.org