

# Right to work and access to the labour market

HelpAge submission to the 12<sup>th</sup> session of the Open-Ended Working Group on Ageing

## Scope of the right

### Question 2. Key normative elements

#### 1. Prohibition of ageism and discrimination in employment

Older persons have the right to work on an equal basis with others and without discrimination on the basis of their age or any other ground, with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.<sup>1</sup>

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<sup>1</sup> Art. 23 Universal Declaration of Human Rights (hereafter 'UDHR'); art. 6 read in conjunction with art. 2(2) International Covenant on Economic, Social and Cultural Rights (hereafter 'ICESCR'); art. 11 Convention on the Elimination of All Forms of Discrimination against Women (hereafter 'CEDAW'); art. 27(1)(a) Convention on the Rights of Persons with Disabilities (hereafter 'CRPD'); art. 18 Inter-American Convention on Protecting the Human Rights of Older Persons (hereafter 'IAC'); art. 6 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (hereafter 'AOP').

Older persons have the right to reasonable accommodation in the workplace.<sup>2</sup>

Older persons have the right to access to the labour market, including physical access to workplaces, access to information about employment opportunities, and training.<sup>3</sup>

Older persons in receipt of a pension have the right to work on an equal basis with others, and to determine when, at what pace and to what extent to withdraw from the labour force.

Older persons have the right to an age-inclusive workplace and work environment that is free from all forms of ageism and age discrimination.

## **2. Favourable, fair, and safe working conditions**

Older persons have the right to the enjoyment of favourable, fair and safe conditions of work, which ensure, in particular:

- (a) Remuneration which provides all older workers, as a minimum, with:
  - (i) Fair wages and equal remuneration, including benefits, for work of equal value without distinction of any kind;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions, including protection from harassment or abuse, and the redress of grievances;
- (c) Equal opportunity for everyone to be promoted in their employment to an appropriate higher level;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.<sup>4</sup>

Older persons have the right to the enjoyment of favourable, fair and safe conditions of work when undertaking informal or unremunerated work.

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<sup>2</sup> Art. 5(3) CRPD.

<sup>3</sup> Art. 9 CRPD.

<sup>4</sup> Art. 23(1) UDHR; art. 7 ICESCR; art. 11(1)(f) CEDAW; art. 27(1)(b) CRPD.

### **3. Vocational training and skills development**

Older persons have the right to access, on an equal basis with others, technical and vocational guidance programmes, placement services and vocational and continuing training and retraining, including apprenticeships.<sup>5</sup>

### **4. Flexible or gradual retirement schemes and flexible working practices**

Older persons have the right to flexible or gradual retirement schemes that take account of the needs and characteristics of older employees.

### **5. Right to form and join trade unions**

Older persons have the right to form and to join trade unions for the protection of their rights and interests.<sup>6</sup>

### **6. Access to prompt remedies and redress**

Older persons have the right to an effective remedy by the competent judicial, administrative or legislative authorities for acts violating their right to work and access to the labour market.<sup>7</sup>

Older persons have the right to access non-judicial dispute resolution mechanisms, such as ombuds procedures, specialist inspectors or commissioners, community mediators, paralegal support and complaints and grievance mechanisms.

Older persons have the right not to be discriminated against on the basis of their age or any other ground in the award of any damages.

## **State obligations**

### **Question 3. Measures that should be undertaken by the State**

#### **1. Prohibition of discrimination**

States Parties shall safeguard and promote the realization of the right to work of older people by taking appropriate measures, including through legislation, to, inter alia:

- a) prohibit all forms of discrimination on the basis of age with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and

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<sup>5</sup> Art. 6(2) ICESCR; Art. 11(1)(c) CEDAW; art. 27(1)(d) CRPD.

<sup>6</sup> Art. 23(4) UDHR; art. 8 ICESCR.

<sup>7</sup> Art. 8 UDHR; Art. 2 (3)(a) and (b) ICCPR.

employment, continuance of employment, career advancement and safe and healthy working conditions;<sup>8</sup>

- b) prohibit all forms of discrimination in retirement schemes and pension policies, including the prohibition of mandatory retirement ages;
- c) prevent all forms of discrimination on the basis of age in all matters concerning employment, career advancement, safe and healthy working conditions, and retirement.<sup>9</sup>

States parties shall take appropriate measures to guarantee the right to work and access the labour market of older persons in receipt of a pension.

## **2. Accessibility**

To enable older persons to work, States Parties shall take appropriate measures to ensure older persons access, on an equal basis with others, to inter alia:

- (a) the physical work environment;
- (b) transport and support services to get to the workplace, both in urban and rural areas;
- (c) all information pertaining to work, advertisements of job offers, selection processes and communication at the workplace that is part of the work process;
- (d) all information pertaining to older persons' right to work and access to the labour market, and trade union rights;
- (a) training opportunities and job qualifications.

These measures shall include the identification and elimination of obstacles and barriers to accessibility that affect the right of older persons to work and access the labour market.<sup>10</sup>

## **3. Just and favourable conditions of work**

States Parties shall take appropriate measures to ensure the right of older persons, to just and favourable conditions of work, including:

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<sup>8</sup> Art. 11 CEDAW; art. 27(1)(a) CRPD; art. 18 IAC; art. 6 AOP.

<sup>9</sup> Art. 18 IAC.

<sup>10</sup> Art. 9 CRPD.

- (a) fair wages, equal opportunities and equal remuneration for work of equal value without distinction of any kind, with particular consideration for inequalities faced by older women;
- (b) safe and healthy working conditions, including protection from harassment, and the redress of grievances, and;
- (c) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.<sup>11</sup>

States Parties shall ensure that older persons are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.<sup>12</sup>

#### **4. Vocational training and development**

States Parties shall take appropriate measures to ensure older persons have effective access to technical and vocational guidance programmes, placement services and vocational and continuing training, including apprenticeships.<sup>13</sup>

#### **5. Promote older persons' participation and inclusion in the labour market**

States Parties shall take appropriate measures to promote older persons' participation and inclusion in the labour market, including measures to:

- (a) promote the development of age-inclusive work environments and organisational culture in order to eliminate ageism and age discrimination;
- (b) promote employment opportunities and career advancement for older persons in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;<sup>14</sup>
- (c) promote opportunities for older persons for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;<sup>15</sup>
- (d) employ older persons in the public sector;<sup>16</sup>

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<sup>11</sup> Art. 7(a) and (b) and (d) ICESCR; art. 11(1)(f) CEDAW; art. 27(1)(b) CRPD.

<sup>12</sup> Art. 4 UDHR; art. 27(2) CRPD.

<sup>13</sup> Art. 6(2) ICESCR; art. 27(1)(d) CRPD.

<sup>14</sup> Art. 7(c) ICESCR; art. 27(1)(e) CRPD; art. 18 IAC.

<sup>15</sup> Art. 27(1)(f) CRPD.

<sup>16</sup> Art. 27(1)(g) CRPD.

- (e) promote the employment of older persons in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;<sup>17</sup>
- (f) ensure that reasonable accommodation is provided to older persons in the workplace;<sup>18</sup>
- (g) promote the acquisition by older persons of work experience in the open labour market;<sup>19</sup>
- (h) promote vocational and professional rehabilitation, job retention and return-to-work programmes for older persons.<sup>20</sup>
- (i) encourage the design of training and knowledge-certification programs to promote access for older persons to age-inclusive labour markets;<sup>21</sup>
- (j) ensure that older people with caregiving responsibilities have access to flexible working conditions on an equal basis with others.

## **6. Flexible or gradual retirement schemes and flexible working practices**

States Parties shall promote labour policies that take account of the needs and characteristics of older employees, with the aim of fostering workplaces that are suitable in terms of working conditions, environment, work hours, and organization of tasks.<sup>22</sup>

States Parties shall promote programs and measures that will facilitate a gradual transition into retirement, for which they may rely on the participation of organizations representing employers and workers, as well as of other interested agencies.<sup>23</sup>

## **7. Informal or unremunerated work**

States Parties shall take appropriate measures to ensure the prohibition of discrimination on the basis of age, including harassment and abuse, on the basis of age in all matters related to employment, including recruitment, continuance of employment, career

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<sup>17</sup> Art. 27(1)(h) CRPD.

<sup>18</sup> Art. 27(1)(i) CRPD.

<sup>19</sup> Art. 27(1)(j) CRPD.

<sup>20</sup> Art. 27(1)(k) CRPD.

<sup>21</sup> Art. 18 IAC.

<sup>22</sup> Art. 18 IAC; art. 6 AOP.

<sup>23</sup> Art. 18 IAC.

advancement, retirement policies, and safe and healthy working conditions, in the informal sectors.

States Parties shall put in place appropriate and effective measures to protect the rights of older persons working in the informal sectors.

States Parties shall adopt legislative, administrative, and other measures to promote formal work for older persons and to regulate the various forms of self-employment and domestic work, with a view to preventing abuse and ensuring them adequate social coverage and recognition for unremunerated work.<sup>24</sup>

### **8. Right to form and join trade Unions**

States Parties shall take appropriate measures to ensure that older persons are able to exercise their labour and trade union rights on an equal basis with others.<sup>25</sup>

### **9. Remedies and redress**

States Parties shall take appropriate measures to ensure that older people have access to the necessary mechanisms to make complaints and seek redress for denial of their right to work and access to the labour market.

States Parties shall adopt comprehensive anti-discrimination laws that prohibit all forms of discrimination on the basis of age in all areas of life, including employment and retirement. Such laws should establish clear procedures and make the necessary adaptations to the rules on evidence and proof to enable victims of discrimination to access justice and secure effective remedy.

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<sup>24</sup> Art. 18 IAC.

<sup>25</sup> Art. 23(4) UDHR; art. 8(1) ICESCR; 27(1)(c) CRPD; art. 18 IAC.