



General Assembly

Distr.: General

6 March 2020

Original: English

Open-ended Working Group on Ageing
Eleventh session
 6-9 April 2020

Substantive Inputs on the Focus Area “Right to Work and Access to the Labour Market”

**Working document submitted by
 the Department of Economic and Social Affairs (DESA)**

Table of Contents

	<u>Page</u>
I. Introduction	2
A. Background.....	2
B. International human rights framework.....	2
II. Analysis of Submissions Received	3
A. National legal and policy framework	3
1. Legal provisions and policy frameworks	3
2. Challenges regarding the realisation of the right to work and access to labour market.....	6
3. Available data and research.....	8
B. Availability, accessibility, acceptability and quality.....	9
1. Access to the labour market	9
2. Availability of specialised services.....	10
3. Best practices.....	12
4. Available protections	13
C. Equality and non-discrimination.....	15
D. Remedies and redress.....	16

I. Introduction

A. Background

1. The open-ended working group, established by the General Assembly in its resolution 65/182 with the purpose of strengthening the protection for the human rights of older persons, will hold its eleventh session at the United Nations Headquarters from 6 to 9 April 2020. The substantive discussions will focus on two areas: right to work and access to the labour market, and access to justice. To that end, the Bureau called for substantive inputs from Member States, national human rights institutions, non-governmental organisations and United Nations system agencies and bodies, following questionnaires prepared by the Secretariat on the two focus areas.
2. During the eleventh session, the open-ended working group will consider and discuss the contributions received, based on the working documents prepared by the Secretariat. The present document contains the analytical summary of contributions on the focus area: right to work and access to the labour market.

B. International human rights framework

3. The right to work is enshrined in international human rights law, with some instruments addressing specifically the rights of older persons to engage in income generating activities. The Universal Declaration of Human Rights¹ entitles everyone to the right to work, freedom to choose employment as well as to quality employment, that is just and carried out in favourable conditions, and protection against unemployment. The realization of the right to work and the adequate access to the labour market by older persons is considered a pre-requisite for dignity and living independently, as stated in the United Nations Principles for Older Persons adopted by the General Assembly² in 1991.
4. The International Labour Organisation (ILO) Centenary Declaration for the Future of Work, adopted in 2019, is grounded in similar tenets, calling upon Member States to implement measures to help older workers “expand their choices, optimizing their opportunities to work in good-quality, productive and healthy conditions until their retirement, and to enable active ageing”. The declaration also urges Member States to strengthen opportunities for effective lifelong learning and quality education for all, thus including older persons.
5. Human Rights instruments and ILO’s normative framework (through its Conventions and Recommendations) provide concrete guidance for the realization of the human right of older persons to work, and to enable their access to labour markets, in various areas. Several provisions address the pervasive age-based discrimination that exists in labour markets and results, inter alia, in higher risks of

¹ UDHR, Article 23

² Resolution 46/91

employment termination and increased difficulties regaining employment for older persons. The Committee on Economic, Social and Cultural Rights urges States to take measures to prevent discrimination on the grounds of age in employment and occupation and to develop retirement programmes³. According to ILO, age should also not constitute a valid reason for termination of the employment relationship and this principle should be clearly enshrined in national laws and practices on retirement⁴. Further, the ILO highlights the need to design national policies aimed at curbing age-based discrimination guaranteeing the right of older persons to work and access to the labour market⁵.

6. The committee on Economic, Social and Cultural Rights compels Member States to establish retirement ages⁶, and suggests employing older workers in occupations and jobs that can maximize and build on the competencies of older workers while preparing them for retirement⁷. Importantly, the right of all people to join trade unions before and after retirement is rooted in Article 8 of the Covenant on Economic, Social and Cultural Rights and apply to older workers as well.
7. ILO Recommendation on Older Workers⁸ establishes that unions and employers' organizations have a fundamental role in guaranteeing the right to work and access to the labour market, as well as in designing programmes that prepare older workers to retirement. Such programmes shall inform pensioners about their rights and obligations as well as how to remain an active member of society regardless of individual employment status. The situation of older women has been addressed by the Committee on the Elimination of Discrimination against Women⁹, which has highlighted the importance of paid work for older women. In this regard, social protection, particularly non-contributory pensions are crucial to strengthen older persons' livelihoods, particularly older women who are more likely to have suffered from gender pay gap and precarious working conditions throughout their lifetime¹⁰.

II. Analysis of Submissions Received

A. National legal and policy framework

1. Legal provisions and policy frameworks

8. Inputs show that legal provisions and policy frameworks recognizing the right to work for all citizens exist in a majority of countries, with guarantees against discrimination in the labour market covering, among other grounds, age. Where

³ CESCR General Comment 6, (paragraphs 22-25)

⁴ ILO Recommendation 131 (1967); Recommendation 162 (1980); and Recommendation 166 (1982)

⁵ ILO Recommendation 162 (1980)

⁶ CESCR General comment 19 (paragraph 15)

⁷ CESCR General Comment 6 (paragraph 22-25)

⁸ ILO Recommendation 162 (1980)

⁹ CEDAW General Recommendation 27

¹⁰ The Social Security (Minimum Standards) Convention; Invalidity, Old-Age and Survivors' Benefits Convention; CESCR General Comment 19 (paragraph 9)

laws or policies aimed at older persons exist, there usually have provisions regarding the right to work and access to labour market more specific to this age group.

9. Many countries identify national constitutions as the overarching legal framework that guarantee the right to work, including Dominican Republic, Kenya, Mauritius, Mexico or Honduras, South Africa and, in some cases, stipulate the obligation of the state to promote decent work. In some countries, like Colombia and Spain, the right to work is also shaped as a social obligation or duty. Generally, national constitutions refer to the right to work of all citizens, with no age distinction. Some respondents, such as the Kyrgyz Republic, note that constitutions also establish the prohibition of discrimination on the basis of age as a general principle applicable, inter alia, to the right to work.
10. Labour codes, employment acts and legislation regulating labour relations are also prominent in responses of countries regarding the right to work and access to labour market for older persons. In some countries these regulations enshrine the right of citizens to equal opportunities to exercise labour rights and freedoms without restrictions of age, such as is the case in the Kyrgyz Republic and Lesotho, and outlaw discrimination of workers on many grounds including age, as in Uganda. Where regulations identify vulnerable categories within the population, older persons may be recognized as a group, as is the case in Serbia as reported by its national human rights institution. In Poland, the Act on Employment promotion and labour market institutions guarantees the principle of equal treatment also in access and use of labour market services and labour market instruments irrespective of, inter alia, age. In Mongolia, the parliament is considering a draft revised labour code which includes a specific chapter on employment of older persons, as reported by its national human rights institution.
11. Anti-discrimination legislation is also singled out as relevant by several respondents, such as the Czech Republic, Ireland and the national human rights institutions of Australia, Denmark, and Germany. In Canada, the Charter of Rights and Freedoms enumerate age as a ground of prohibited discrimination, and also protects against discrimination based on an intersection of grounds, such as age and disability or age and sex. In Germany, the Act on Equal treatment not only prohibits discrimination on the grounds of age but obliges employers to carry out measures to protect against discrimination. In the United States, the Age Discrimination in Employment Act (at the federal level) protects workers who are 40 years and older from age-based employment discrimination, as reported by civil society.
12. Where they exist, laws and national policies on ageing and older persons regulate the right to work for older persons more explicitly and contemplate specific actions to materialize this right, as is the case in Malta, Lesotho, Jordan and Guatemala. In the Dominican Republic, the Law to Protect Older Persons establishes that the ministry of labour as well as organizations of workers and employers must take the necessary measures to allow older persons to work safely and adequately. In Ecuador, article 21 of the Law of Older Persons establishes, among other aspects,

that older persons have the right to access decent and remunerated work voluntarily and without discrimination, guaranteeing gender equality and equality among cultures. The Law on the Protection of Older Persons and Retired Adults in Honduras recognizes the right to a work environment that does not increase the vulnerability of older persons. In the Russian Federation, the Strategic Action Plan in the Interests of Older Citizens, adopted in 2016, has as one of its main goals to create conditions to prevent discrimination against older citizens and encourage them to stay in the labour force longer, and it prioritizes the stimulation of the employment of older persons and their access to information and educational resources.

13. Some countries have regulations focused on older persons and employment. For instance, among other initiatives in the country, an agreement was reached in France between trade unions and business executives in 2005 concerning the employment of senior workers as a first step to legally recognize the specificity of senior labour. Subsequently, a National Action Plan for Seniors Employment was enforced between 2006 and 2010 with the aim of reaching an employment rate of 50 per cent among people aged 55 to 64 years and improving the conditions of older workers. The national human rights institution of the Republic of Korea reports that the Act on Prohibition of Age Discrimination in Employment and Senior Employment Promotion states government's obligations to support and promote labour force participation of older persons. In Japan, the Act on Stabilization of Employment of older persons has as its main objective, to promote employment of older persons.
14. National development plans are identified by some respondents, including Ecuador, Uganda and Lesotho as contributing to the right to work and access to the labour market by older persons.
15. Applicable regional frameworks play an important role in some regions. Respondents from the Latin American Region, including Argentina, Costa Rica, Uruguay and Ecuador, refer to the Inter-American Convention on Protecting the Human Rights of Older persons, which determines the scope of the right to work for older persons in article 18. Cameroon and Nigeria's National Human Rights Commission identify the African Charter on Human and Peoples' Rights. The European Union recognises the European Charter of Fundamental Rights of the European Union as well as the European Pillar of Social Rights as relevant. The United Nations Economic Commission for Europe (UNECE) identifies the 2017 Lisbon Ministerial Declaration where Member States committed to the goal of encouraging longer working life and ability to work in the region's ageing societies to make the most of the potential of longevity. Civil society points to the European Union Directive 2000/78/EC, which prohibits discrimination based on age in employment and training.
16. Some parties to relevant international human rights treaties, in particular the International Covenant on Economic, Social and Culture Rights, identify these

instruments as relevant legal documents, as reported by the national human rights institutions of Germany and Australia.

2. Challenges regarding the realisation of the right to work and access to labour market

17. Age-based discrimination is identified by virtually all responses as a main challenge faced by older persons in their realisation of the right to work and access to labour market. Age discrimination, in the form of conscious or unconscious bias as well as discriminatory practices, is observed at all stages of the employment process. In recruitment, respondents report that many employers give preference to younger workers and are often openly unwilling to hire older adults. For instance, a survey in the Kyrgyz Republic shows that 58 per cent of participants aged 50 years and over faced discrimination while seeking employment. The national human rights institution in Georgia notes alarming trends in discrimination in labour and pre-contractual relations, as well as discriminatory job announcements. Job advertisements where specific age groups and gender are identified are also reported in several inputs.
18. While employed, older persons often suffer discriminatory treatment at work including, inter alia, unequal employment terms and conditions, lack of opportunities for promotion and professional development, discrimination in the access to further training and education, or pressure to retire. The national human rights institution of Croatia reports that older workers, fearing long-term unemployment, may choose early retirement and receiving a smaller pension, if they have the option. In France, employed older persons are more likely to occupy part-time or short-term positions. Prejudices may also be at play in performance evaluations, as reported by the national human rights institution of Germany. In addition to discriminatory wage differences, reported by several inputs, the national human rights institution of Peru notes that, according to the 2017 national household survey, 33.8 per cent of older women in rural areas are reported to work without receiving payment, compared to 4.8 per cent of older men in rural areas. The national human rights institution of Mongolia indicates that in some cases employers do not pay social insurance for older employees. Some inputs also refer to discrimination during the process of dismissal. Once unemployed, it is very difficult for older jobseekers to re-enter the workforce, as reported by Sweden and other countries. In France, for example, there was an increase of 179 per cent in the number of jobseekers aged 55 and over, following the 2008 crisis.
19. Prejudices lead to a labour market that overvalues youth over older workers, according to many inputs. For instance, Lesotho reports that as a result of high unemployment rates in the country, it is unlikely for older persons to get employment in the civil service over a younger person, even if both parties qualify for the advertised position. The gap between younger and older persons in the labour market is widened by the history of precarious employment among many older adults, as is the case in Argentina. Spain notes that companies discriminate

against older persons in favour of younger workers because it is cheaper to employ younger people.

20. Several inputs report that where variables such as gender and disability coexist with older age, discrimination is stronger. Uganda explains that gender inequalities among older persons in the labour market are present on a wide range of aspects, including legal status, access to land, employment and career development. Data on gender pay gap in the United Kingdom shows that the pay gap between males and females aged 50-59 years is considerably higher than the pay gap between males and females aged 17-29 years. This double discrimination is also reported in the United States, where civil society refer to studies that point to a higher prevalence of age discrimination in hiring against older female job applicants compared with their male counterparts. In this context, Ireland advocates for more consideration and support to older women wishing to remain or re-enter the workforce. Socioeconomic aspects are also important. Older workers with lower educational levels are particularly vulnerable to long-term unemployment and experience more challenges when medical conditions arise.
21. Barriers to employment that push older persons to retire or prevent them from remaining employed exist in many countries. Canada reports that in recent years it has worked to remove disincentives and increase incentives to work, including by revising the retirement income system, developing skills training initiatives, and providing workplace accommodations to promote longer working lives and gradual transitions from employment to retirement. Mandatory retirement ages are specifically identified by a number of submissions as a challenge to the full realization of the right to work of older persons, especially in the public sector. In several countries the retirement age for women is lower than for men, with adverse consequences for the economic security of women, as noted by civil society.
22. Honduras notes that inadequate or inexistent accessibility conditions and work environment adaptations also pose a challenge for the realization of the right to work by older persons. Rigidity in the organization of work, for instance by not allowing flexible work time arrangements, can be particularly damaging to older persons as noted by Ireland and the national human rights institution of Australia.
23. Higher rates of vulnerable employment and informal employment among older adults are also identified as a challenge to the realization of their right to work. According to civil society, such rates are higher among older women than older men. In Uruguay, older persons are often employed in the informal sector in precarious conditions, as they have limited choices in the formal market due to discrimination, low education levels or medical limitations. Further, care giving responsibilities can prevent older workers from engaging in the formal labour market. In the United Kingdom there was an estimated 4.5 million informal caregivers between 2017 and 2018, with older people - particularly older women - more likely to have caregiving responsibilities.

24. Lack of access to training by older workers can also be a challenge, especially in the context of evolving and fast changing labour markets, where older workers are neither offered nor encouraged to take advantage of education and training activities, as pointed out by Turkey, among others. Some countries note that older persons tend to be less educated than younger cohorts. In Ecuador, for example, the national agenda for intergenerational equality (2017-2021) highlights that 23.7 per cent of older adults are illiterate. The digital gap between older and younger persons is specifically addressed in several inputs, in view of the increasingly demand for Information and Communications Technology (ICT) skills in the labour market.
25. Other challenges identified by inputs include medical conditions that prevent older persons from engaging in the labour market, lack of or inadequate legislation and policies targeting older persons; absence of personnel policies in companies focused on older workers; lack of specialised support to older persons, as well as language barriers.

3. Available data and research

26. Inputs show that information regarding the engagement of older persons in the informal economy is seldom available, with informal work not well-captured in standard measures of employment. In some countries, available data on informal work is not disaggregated by age and gender or does not include older persons in the analysed age groups, which hinders discussions on employment, unemployment and underemployment rates by age group.
27. When available, relevant data and statistics are usually produced by National Statistical Offices through censuses, household surveys, labour force or income surveys and other sources. In Costa Rica, for instance, census data show relevant information on the subject, revealing that among older persons in the workforce, 80 per cent of women are employed in the informal market with respect to 72 per cent of men. Relevant data may also be gathered by national labour inspecting authorities.
28. In some countries, such as the Dominican Republic, Argentina and Serbia, time use surveys collect relevant data. In Argentina, the non-remunerated work module applied by the Annual Urban Household Survey measures non-remunerated care services provided by men and women in urban households. Relevant research on informal carers and employment was also identified by the United Kingdom. Other relevant surveys identified by respondents include the survey to measure the contribution of women in agricultural activities in the Dominican Republic. Ireland points to the Irish Longitudinal Study on Ageing as conducting research around employment of older persons that include explorations of trends in employment and the burden of informal care carried by older persons in the country. Surveys targeting ageing and older persons tend to cover these issues, as reported in Mexico, Germany and Vietnam.

29. Another source of information are non-recurrent studies conducted by national institutions. For instance, the Bank of Canada conducted a recent study which showed that of the 30 per cent of Canadians participating in informal work, about 26 per cent were seniors (defined as aged 55 years and above). In France, the report “Strategie and the Conseil d’Orientation pour l’emploi” estimates that young people and older people are more likely to engage in informal labour than other groups. In Germany, relevant studies are carried out by several institutions including the Federal Institute for Population Research, the Federal Ministry for Family Affairs, Senior Citizens Women and Youth or the German Institute for Economic Research.
30. Research undertaken by private foundations and university on informal work are also identified in several inputs. Relevant studies and datasets produced by international organizations, in particular the International Labour Organization are recognised. Research by civil society also sheds light on some of the data regarding older persons and more specifically older women in the informal market.

B. Availability, accessibility, acceptability and quality

1. Access to the labour market

31. Respondents highlighted a range of measures taken to promote the access of older persons to the labour market. Some Member States reported on providing monetary incentives to encourage employers to hire and retain older workers. In some countries, companies are eligible to receive or extend grants when hiring older jobseekers. Responses referred to online job matching services, some with functionalities targeted to help older workers find employment. These services require employers who are open to hiring older workers to register or self-identify as such. In Japan, for instance, an optional continuous employment system that mandates employers to secure jobs until 65 years of age for all those who wish to continue to work beyond the retirement age of 60 was highlighted. Labour conditions under this system, however, tend to be poor and discriminatory.
32. Many older persons do not have the necessary education or training that correspond to the needs of the labour market. Several submissions reported on measures aimed at providing older persons with education and training opportunities crucial for individual development, participation, empowerment and employment prospects, as well as for a well-functioning labour market. Technology has become increasingly relevant, both to access information about employment opportunities, as well as to perform in the workplace. It provides new and innovative means of adapting jobs and workplaces to facilitate the continued employment of ageing workers. Digital inclusion programmes, in some cases, do not include provisions specifically oriented for older persons, but rather have services that are accessible to all under-represented groups who would benefit from participating in the digital economy. Other initiatives aim at facilitating access to the use of computers and new technologies by older persons.

33. Other measures reported include training, knowledge-transfer and mentoring. Some protocols specifically target older persons to access training plans funded by employers. Canada, for example, highlighted a government initiative that offers student grants to older workers, coupled with employment insurance measures. Eligible claimants who have lost their jobs and need to acquire new skills to find employment, can continue receiving benefits while taking a full-time course or training programme. Internship programmes set-up in public, private, educational and social institutions, aim to transfer the knowledge and expertise of older persons to younger and less experienced employees, in a way that engages older persons in an economically remunerative activity.
34. Regarding workplace accommodations, respondents pointed to recent amendments to labour codes that assist older employees by creating the right to request flexible work arrangements, expanding medical leave, entitling employees to unpaid breaks whenever necessary for medical purposes and creating new paid and unpaid personal leave which employees can access for a variety of reasons, including to help them manage family responsibilities and/or other urgent matters related to them or their families. Submissions promoted occupational health and safety principles that foster the employability of older persons, encourage increasing job rotation and flexibility, as well as support employers to adopt practices that decrease potential health risks experienced by older workers.
35. Several Member States reported on measures, aimed to benefit all persons, especially persons with disabilities, to remain in or return to work. While such initiatives require employers to make reasonable adjustments to include workers with disabilities, this requirement may not necessarily apply to older workers experiencing diminished intrinsic capacities and functional abilities that do not meet the disability criteria.
36. In a lesser extent, respondents noted that Governments have not chosen to target specific labour market policy measures towards older persons. A submission attributed the lack of measures to the national economy, which does not accommodate employment of older persons especially in civil service, noting high unemployment rates for youth.

2. Availability of specialised services

37. Many countries reported on adopting diverse incentives aimed at facilitating the employment and retention of older workers. Adopting age friendly policies and strategies has become a necessity to create equal opportunities for older workers while, at the same time, it has generated new demands, such as targeted skills training, literacy and education services, establishment of social protection measures, age friendly and accessible workplaces, provision of flexible working arrangements, and changes in retirement ages, amongst others.

38. The availability of specialised services targeted for older workers differs across countries and regions as a result of different policy priorities. Several submissions indicate that the provision of specialised services is needed to enable older people to find employment and contribute to society, yet some note that such specialised services rarely exist. In France, registered unemployed older persons are provided employment information that helps them acquire professional qualifications and access training opportunities to ensure older workers can adapt to the changing demands of the labour market. Government led employment promotion measures for older workers in Japan at the Public Employment Security Office help older workers find jobs or start their own business.
39. UNECE stresses that such specialised services should be complemented by policies that ensure that workplaces are adapted to the specific needs of older persons; including through the creation of age friendly recruitment platforms, tailored training programmes and skills development that help older workers meet the demands of new technologies. In that regard, Canada has created online recruitment agencies targeted to older workers which specialise in connecting them with prospective employers. Similarly, according to the national human rights institution of Malaysia, a national online platform in the country provides job placement services by matching senior citizens with employers.
40. Ageist narratives, whereby hiring older persons is perceived as riskier or more burdensome than hiring younger counterparts, is being challenged by an increasing number of countries through age friendly labour market strategies. Many Member States refer to the “longevity revolution” and stress the potential of older workers to contribute to the economy. Some countries have adopted policy and legal provisions for the older workforce through legislative regulations, guidelines and general labour laws regarding obligations of employees and employers within collective labour agreements and statutes to promote and protect the right to work of older persons. This has resulted in increased age friendly workplaces, provision of flexible work arrangements and increases in social security benefits for older persons.
41. Other measures undertaken by countries include forging partnerships with private companies to help increase work opportunities for older workers and offering incentives to companies to employ and retain older workers. For example, the Act on Employment Promotion and Labour Market Institutions in Poland offers tax exemptions to companies with workers over 55 years (women) and 60 years (men). Similarly, France offers grants and tax exemption schemes to companies who employ older workers as an incentive to retain them.
42. A few countries seek ways to support their older workers by strengthening institutional structures and fostering synergies between public agencies, private companies and non-governmental entities that provide services for the employment of older persons. Some countries conduct research to adopt evidence-based measures to safeguard the right to work for older workers as the demand for work

in old age increases. Ireland has adopted the National Positive Ageing Strategy which provides a framework for cooperation to promote the employment of older persons by addressing age related policies and service delivery which includes identifying barriers that prohibit the employment of older persons and uses this as context to address them.

3. Best practices

43. Best practices to uphold the right to work of older persons and promote their access to the labour market are reported in various areas, including:

Inclusive policies

44. Several countries are in the process or have formulated age inclusive policies as a way to promote the access of older persons to the labour market. For example, in Chile collaboration agreements were signed between the National Agency for Older Persons and the National Agency for Training and Employment which help commit private companies to promote inclusive labour policies for older persons. In Honduras, age friendly policies have strategically been tied to the national Action Plan for Active and Healthy Ageing by the government to enable institutions to have more proactive roles in the employment of older persons. According to the World Health Organization making such policies effective requires approaches that create opportunities for older persons who can and want to contribute, and policies that support employers who are willing to recruit, train and retain workers and volunteers.

Legal mandate

45. Submissions noted the importance of having a legal document or provision to ensure the prevention of discrimination based on age in employment. For example, the Australian Human Rights Commission Act, the Age Discrimination Act and the Fair Work Act provide a national legislative framework to ensure protections of older persons to enjoy favourable work conditions, as reported by its national human rights institution. In its Employment Equality Act, Ireland outlawed discrimination on any employment-related area including in recruitment and promotion, equal pay, working conditions, training, dismissal and harassment, among others. The Employment Rights Act and the Equal Opportunities Act in Mauritius, as reported by its national human rights institution, and the of article 5 of the Law of the Russian Federation No. 1032-1 respectively protect employees from harassment and discrimination on basis of their age.

Pension reforms

46. Countries such as Japan, Ireland, Mauritius, Spain and the United Kingdom reported on a variety of reforms including increasing contributions, deferral of contributory pension schemes, or changes in retirement ages. Ireland initiated the

Roadmap for Pensions Reform (2018-2023) and the Workplace Relations Commission ‘Code of Practice’ which informs best practices in managing the engagement between employers and employees. In the Republic of Korea, the retirement age has been deferred to 60 years to respond to rapid population ageing in the country, according to its national human rights institution.

Social protection

47. Argentina established in 2016 the Universal Pension for Older Adults to expand social security coverage. Contributions required from employees and employers under federal laws are serviced through the Argentine Integrated Social Security System and classified as service time for the purposes of potential entitlement and social security benefit.

Skills training and development

48. To keep older persons abreast with digital technologies, many countries invest in the development of their ICT skills, education and literacy, and vocational training. Germany has a dedicated platform and a free telephone helpline which includes training information for older persons across the country. Some sectors at the local government level in Kenya and Slovenia provide older workers with training on business related areas and life skills. Employment offices within the Secretariat for Labour in Argentina collaborate with the skills training and employment offices to provide customised services for older persons including: job information, free-of-charge professional skills training and guidance courses, microentrepreneur assistance programmes, and job search workshops. Other countries have partnered with private international companies to promote the exchange of experiences and knowledge between older persons and younger generations.

Research and data collection

49. As reported by the national human rights institution of Australia, the Centre of Excellence in Population Ageing and Research undertakes research and prepares reports on the older workforce. The entity also compiles good practices and shares them with other organisations to ensure older persons enjoy the right to work and have access to the labour market. Further, the Diversity Council in the country also undertakes research and develops resources to assist employers attract, engage, and retain workers of all ages. In Poland, the National Statistical Office publishes data about the local labour market, including unregistered employment, with its latest publication “Unregistered employment in Poland in 2017” breaking down employment data by sex and age, among others.

4. Available Protections

50. Several respondents noted that while there is no specific legislation to ensure that older persons enjoy just and favourable conditions of work, the right to work by

older persons is recognised in their constitutions and national legislation as the legal basis that guarantees these rights for all citizens, albeit older persons are generally not specifically mentioned.

Some submissions from the Latin American region referred to the Inter-American Convention on Protecting the Human Rights of Older persons, which determines the scope of the right to work for older persons. The Convention prohibits discrimination and establishes that the employment of older persons must have the same guarantees, benefits, labour rights and remuneration for equal tasks and responsibilities.

51. Many respondents highlighted existing national legislation that protect older persons against discrimination; some specifically related to age, and others on general equality legislation that includes age as a prohibited ground of discrimination. Such legislation addresses recruitment and promotion; equal pay; working conditions; training; dismissal and harassment. Some Member States reported on labour code amendments to prohibit employers in the federally regulated private sector from paying two employees performing the same work at different wage rates based solely on their employment status, subject to exceptions. Given that older persons are overrepresented in part-time work, such measures are expected to enhance their access to equal remuneration for work of equal value.
52. Despite existing legal stipulations, some respondents raised concerns over the adequacy of protection provided to older workers, highlighting existing barriers in access to justice, including long court trials, as well as high and unforeseeable trial expenses. Considering that many older people are engaged in the informal sector, a significant number of older workers remains unprotected under these measures.
53. Occupational health and safety legislation were identified by many respondents as relevant to ensure that older persons enjoy just and favourable conditions of work. Basic elements to ensure safe working conditions include health and safety laws, workplace resolution bodies, provision of information and training, as well as management systems and solutions that support health, safety and wellness programmes. Few respondents reported on joint consultative committees that include representatives from government, employers and labour, to ensure the well-being of workers, including older people.

C. Equality and non-discrimination

Human Rights Standards (Art 23 UDHR; Art 6 & 7 CESCR; General Comment 6)

- The Covenant recognizes the right to work and to the enjoyment of just and favorable conditions of work. General Comment stresses the need for measures to prevent discrimination on grounds and age in employment and occupation. Member States shall guarantee that employers do not exert discrimination on the basis of age within their national policy framework.

ILO Standards (R162 and R166)

- Each Member should, within the framework of a national policy to promote equality of opportunity and treatment for workers, whatever their age, and of laws and regulations and of practice on the subject, take measures for the prevention of discrimination in employment and occupation with regard to older workers. Age, subject to national law and practice regarding retirement, should not constitute valid reason for termination.

54. Many submissions framed non-discrimination of older persons in the right to work and access to the labour market in general clauses of non-discrimination in their legislation that include age as a ground and would apply to all rights, including that of the right to work. Frequently identified by respondents among these are laws on equal treatment and protection against discrimination and discriminatory practices, human rights legislation, and national constitutions. Many submissions alluded to labour-related legislation as having provisions against discrimination on several grounds, including age. In fewer cases, specific legislation regarding the prohibition of discrimination in employment for older persons or on the grounds of age are in place. A number of inputs show that, in some countries, age is not included as a ground of prohibited discrimination in employment.
55. Relevant regional frameworks were identified by several inputs. States Parties to the Inter-American Convention on Protecting the Human Rights of Older Persons, such as Argentina and Costa Rica, recognised it as a legislative mandate that is transposed into law at the national level and enshrines the prohibition against age-based discrimination in relation to labour market access.
56. Several pieces of legislation from the European Union were referenced as affecting all the European Union Member States. These include the Lisbon Treaty which introduced a horizontal clause with a view to integrating the fight against discrimination into all European Union policies and actions, and the Charter of Fundamental Rights and the European Social Charter. European Union Council Directive 2000/78/EC establishes a general framework for equal treatment in employment and education and includes age as a ground for discrimination, while stating that workers may be treated differently on the basis of age if they are objectively and reasonably justified by a legitimate aim¹¹.

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0078&from=EN>

57. Where policies and legislation for older persons exist, discrimination against older persons may be prohibited broadly or, in some cases, specifically with respect to the right to work and access to the labour market. For example, in Honduras the Comprehensive Law on the Protection of older persons and retired adults recognises the right to have decent work, to not be discriminated against and to a work environment and living conditions that do not increase the vulnerabilities of older persons.
58. Some submissions brought to light ongoing examinations of the role played by mandatory retirement age provisions in the context of discrimination against older persons in the right to work. Some respondents focused on efforts to ensure that older persons have access to minimum benefits upon retirement through social protection systems, while others described mandatory retirement ages as a reasonable limit, and a small number of inputs referred to the abolishment of retirement ages in their national context.
59. Inputs suggest that where age is included under the grounds by which discrimination is prohibited on the right to work, in many instances differential treatment is permissible if such unequal treatment is objectively and rationally justified by a legitimate aim.
60. Many inputs showed that, regardless of existing discrimination provisions in national legislation, ageism and ageist stereotypes negatively impact the enjoyment of the right to work and access to labour market by older persons.

D. Remedies and redress

ILO Standards (R162)

- Older workers and trade union organisations as well as employers and their organisations should have access to bodies empowered to examine and investigate complaints regarding equality of opportunity and treatment, with a view to securing the correction of any practices regarded as in conflict with the policy.

61. Mechanisms for older persons to submit complaints and request reparation for the denial of the right to work on account of their age, apply to older persons who are employees.
62. Some respondents reported on administrative and judicial mechanisms to guarantee its citizens obtain reparations when their labour rights are denied. Such mechanisms are processed by labour inspectors and the labour justice system. Several States reported that the primary means of redress is through the human rights commissions or tribunals established under related legislation. If the commission or tribunal concludes that a person or entity has engaged in a discriminatory practice, it may make an order to cease such practice, to take measures to reverse the effects of

discrimination, to pay compensation and/or to adopt affirmative action programmes.

63. Submissions highlighted government-funded helplines established to assist people, including older person, with discrimination concerns. Legal advice is also offered in some Member States by trade unions to their members. In some cases, older persons can use an online complaint form available on the website of the commissions to bring a discrimination claim under equality legislation. Some countries who are members of the European Union, highlighted that older persons can also appeal to the Court of Justice of the European Union as the court of final appeal. High legal costs and lengthy proceedings, however, discourage litigation by older workers.

Possible consideration of normative elements

64. This working document has focused on substantive elements put forward in submissions made to the eleventh session of the open-ended working group in the area of the right to work and access to the labour market of older persons by Member States, national human rights institutions, non-governmental organisations and the United Nations system agencies and bodies, as noted at the beginning of this document. The open-ended working group may wish to consider discussing normative elements related to this specific right in its twelfth session, to be held in 2021.