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Substantive Inputs in the form of Normative Content for the Development of a Possible International Standard on the Focus Areas “Education, Training, Lifelong learning and Capacity Building” and “Social Protection and Social Security (including social protections floors).”

**Working document submitted by
the Department of Economic and Social Affairs (DESA) in collaboration
with the Office of the High Commissioner for Human Rights (OHCHR)**

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I. Background

1. The Open-Ended Working Group on Ageing, established by the General Assembly in its resolution 65/182 with the purpose of strengthening the protection of the human rights of older persons, will hold its eleventh session at the United Nations Headquarters from 29 March to 1 April 2021. Under item 6 of the Agenda, the Working Group will follow-up to resolution 74/125: measures to enhance the promotion and protection of the human rights and dignity of older persons: best practices, lessons learned, possible content for a multilateral legal instrument and identification of areas and issues where further protection and action are needed. To that end, the Bureau called for substantive inputs in the form of normative content for the development of a possible international standard, following questionnaires prepared by the Secretariat on the two focus areas of the tenth session: “Education, Training, Lifelong learning and Capacity Building” and “Social Protection and Social Security (including social protections floors).” Substantive inputs were received from Members States, national human rights institutions, non-governmental organizations and United Nations system agencies and bodies. During the eleventh session, the Working Group will consider and discuss the contributions received, based on the working document submitted by the Department of Economic and Social Affairs (DESA), in collaboration with the Office of the High Commissioner for Human Rights (OHCHR).

II. Education, Training, Life-long Learning and Capacity Building

A. Definitions in National Laws

2. Respondents described various constitutional arrangements of older persons’ right to education, training, life-long learning and capacity building. These include general guarantees (without reference to age), specific guarantees for older persons (explicit and implicit), and combinations. No general or specific guarantees comprehensively covered all areas of education, training, life-long learning and capacity building. Guarantees include broad formulations such as equal opportunity to attain the highest educational standard possible. Guaranteed settings include state or state-sponsored educational institutions. General guarantees describe the right to access particular levels: fundamental, primary, general, basic, secondary, middle, and higher; and particular types: technical, vocational, industrial, artistic, sporting, professional, training, retraining, official and physical education.

3. Specific constitutional guarantees for older persons varied in definition and scope, promising universal, equal and sufficient opportunity of access. None guarantee all areas of education, training, life-long learning and capacity building to older persons. Implied guarantees include limited obligations, such as to provide older persons with the means to pursue personal development, achievement, and participate in the community, or describe education as a life-long right. Other descriptions note that education protects older persons against labor or economic exploitation, fosters their personal autonomy, reduces their dependence and secures their full social integration.

4. Responses noted the importance of national laws where constitutional guarantees are absent. Inputs described diverse national laws affording general, specific and non-discrimination guarantees. No national law comprehensively covered all areas of education,

training, life-long learning and capacity building and few provided inclusive, specific guarantees to older persons. National laws are commonly implemented through education policies, frameworks and strategies. Descriptions incorporate formal, non-formal and informal systems of general application. Key differences included levels of institutionalization, intentionality, planning and structure across systems. The United Nations Economic Commission for Europe (UNECE) described life-long learning as combining basic education (literacy, numeracy, school degrees, vocational training and apprenticeship) and further education (job related, Information and Communications Technology (ICT) and languages) and referred to the Lisbon Ministerial Declaration which includes, inter alia, strengthening multigenerational discourse and intergenerational learning, and cultivating a life-course perspective in education.¹

5. Many responses noted adult education as a key element even though current normative standards only include older persons by default. Adult education includes the entire body of ongoing learning processes, formal or otherwise, whereby adults (presumably including older persons), develop their abilities, enrich their knowledge, and improve their technical or professional qualifications or turn them in a new direction to meet their own needs and those of their society.² Inputs noted adult education, and by implication, education for older persons, includes literacy programmes, and fundamental, basic, scientific, technical, vocational and higher education. National laws also define adult and continuing education as processes within the perspective of life-long learning, and thereby implicating older persons.

6. Inputs highlighted definitional elements within national laws. They included the opportunity to develop and strengthen the comprehensive development of every individual throughout their life, to develop capacities and provide opportunities for learning necessary for life-long education and self-development, though notably, guarantees of capacity building were almost entirely absent from inputs. Guarantees include high-quality and free or affordable education throughout life. National laws, including anti-discrimination and consumer protection laws support the right to participate in social activities, seek educational opportunities and access educational programmes. These laws protect the older persons from being treated less favorably because of age in education and service provision, albeit by way of general protections, for example based on the attribute of age.

7. Life-long learning as a concept represents the continuity of the learning and educational process and is reflected in the right to education because it begins at birth and continues throughout life. The Special Rapporteur on Education described its normative evolution “By the end of the 1980s, the idea of a ‘right to learn’ emerged as distinct from that of the ‘right to education’”.³ In essence, life-long learning is founded in the integration of learning and living, covering learning activities for people of all ages, in all life-wide contexts (family, school, community, workplace) and through a variety of modalities (formal, non-formal and informal) that meet a wide range of learning needs and demands.⁴ National laws and strategies promote life-long learning in society and all areas of knowledge, skill and competency, including personal development, employment, active citizenship and participation, but largely without specific reference to its application to the needs of older persons.

¹ 4th UNECE Ministerial Conference on Ageing, 2017 Lisbon Ministerial Declaration, “A Sustainable Society for All Ages: Realizing the potential of living longer”, 22 September 2017, paragraph 15.

² UNESCO. 1997. *The Hamburg Declaration on Adult Learning* (CONFINTEA V). Paris: UNESCO.

³ Singh, K. 2016. *Report of the UN Special Rapporteur on the right to education: Lifelong learning* (Doc. A/71/358.), Paragraph 43.

⁴ UNESCO Institute for Lifelong Learning. 2014. *UNESCO Education Sector Technical Note on lifelong learning*, p. 2.

How should such a right be defined?

8. Desirable definitional qualities incorporated existing general standards, overarching values and contexts, universally sought outcomes and critically important aspects of education, training, life-long learning and capacity building. The United Nations Educational, Scientific and Cultural Organization (UNESCO) describes education as a universal, key, high-priority, human right.⁵ Responses relied on UNESCO's various general standards, recommendations and statements.⁶ UNESCO standards classify education on cross-classification variables: levels, fields and qualification without reference to older age.⁷ 'Education' includes deliberate activities involving some form of communication intended to bring about 'learning', which is individual acquisition or modification of information, knowledge, understanding, attitudes, values, skills, competencies or behaviours through experience, practice, study or instruction.⁸ Some types, such as random or incidental learning, are excluded from some standards but might still fall within a definition.⁹ Notably, life-long learning and capacity building are not articulated as part of the current normative content of the right to education, which highlights a specific gap for older persons.¹⁰

9. UNESCO's Recommendation on Adult Learning and Education (RALE) provides general principles, goals and guidelines, with key normative elements (definition and scope):

- (a) Learning and education involves sustained activities and processes of acquiring, recognizing, exchanging, and adapting capabilities.
- (b) Learning and education includes many learning opportunities for literacy and basic skills; for continuing training and professional development, and active citizenship, through community, popular or liberal education.
- (c) Learning and education provides a variety of learning pathways and flexible learning opportunities, including second chance programmes.
- (d) Literacy is a key component of adult learning and education. It involves a continuum of learning and proficiency levels, including the ability to read and write, to identify, understand, interpret, create, communicate and compute, using printed and written materials, as well as the ability to solve problems in an increasingly technological and information-rich environment. Literacy is an essential means of building people's knowledge, skills and competencies to cope with the evolving challenges and complexities of life, culture, economy and society.
- (e) Continuing training and professional development are fundamental elements in a continuum of learning that equips adults with the knowledge, skills and competencies to fully engage in rapidly-changing societal and working environments.

⁵ UNESCO, Right to Education Handbook, p.28.

⁶ UNESCO Institute for Statistics, International Standard Classification of Education ISCED 2011; UNESCO, Right to Education Handbook 2019; UNESCO Convention against Discrimination in Education (adopted 14 December 1960, entered into force 14 December 1960) 429 UNTS 93 (CADE); UNESCO Recommendation on technical and vocational education and training (2015) UIL/2016/PI/H/3 (RALE); UNESCO Recommendation on adult learning and education (2015) UIL/2016/PI/H/31 (TVET); Incheon Declaration "Education 2030: Towards inclusive and equitable quality education and lifelong learning for all"; Education 2030 Framework for Action, International Standard Classification of Education 2011.

⁷ ISCED 2011, Section 1.3.

⁸ ISCED, Section 2.12 and 2.14 respectively.

⁹ ISCED 2011, Section 4.44.

¹⁰ UNESCO, Right to Education Handbook, p.111. Singh, K. 2016. *Report of the UN Special Rapporteur on the right to education: Lifelong learning* (Doc. A/71/358.)

- (f) Learning and education includes opportunities for active citizenship that empowers people to actively engage with social issues such as poverty, gender, intergenerational solidarity, social mobility, justice, equity, exclusion, violence, unemployment, environmental protection and climate change. It also helps people to lead a decent life, in terms of health and well-being, culture, spirituality and in all other ways that contribute to personal development and dignity.
- (g) ICT hold great potential for improving access to learning opportunities and promoting equity and inclusion. They offer various innovative possibilities for realizing life-long learning, reducing the dependence on traditional formal structures of education and permitting individualized learning. Through mobile devices, electronic networking, social media and on-line courses, adult learners can have access to opportunities to learn anytime and anywhere.

10. Inputs cited the Committee on Economic, Social and Cultural Rights (CESCR) General Comment 6 to the extent that the right must be approached from two different and complementary points of view: (a) the right of older persons to benefit from educational programmes; and (b) making the know-how and experience of older persons available to younger generations. Inputs suggested education should be provided to older persons on an equal basis and without discrimination. Responses highlighted a rights-based approach to education and the need for human rights education, supported by normative and content standards, and with specific content on ageing issues not currently articulated within normative standards, including on content.¹¹ Inputs suggested definitional framing in the context of broader rights to social, economic and cultural participation and freedom of thought and expression, recognizing that older persons' right to education enables them to participate effectively and to access opportunities for the full development of their potential and dignity.¹²

11. Respondents noted the importance of detail on the intergenerational aspects for older persons not currently included in standards. This included sharing, enabling older persons to act as mentors, advisors, and teachers of cultural studies for the exchange of knowledge and experience. Others suggested the transfer of intergenerational experience through solidarity programmes, intergenerational settings and opportunities for intergenerational exchange. Inputs noted opportunities for shared capacity building existed between generations.

12. Respondents noted the life course and life-long context of the right and the way it empowers older persons is critical to normative definition. Instances of specific application to older persons were provided. According to the World Health Organization (WHO), life-long learning is a life-course approach strategy that enables older persons to have the knowledge and skills to manage their health, to keep abreast of ICT developments, to participate, to adjust to ageing, to maintain their identity and to keep interested in life. The International Labour Organization (ILO) noted life-long learning integrates older persons into the contemporary labour market, with the necessary education level to meet changing economic, social and demographic conditions. Inputs described the life course quality of education as illuminating and guiding human development throughout the life span, which allows older persons, without discrimination, to live autonomous, healthy and independent

¹¹ ICESCR Article 13 (1) HRC. Resolution 16/1. *United Nations Declaration on Human Rights Education and Training* (adopted 8 April 2011) (Doc. A/ HRC/RES/16/1.); UNGA. Resolution 66/137. *United Nations Declaration on Human Rights Education and Training* (adopted 16 February 2012) (Doc. A/RES/66/137.) (Articles 1-2).

¹² Committee on the Rights of the Child, General Comment No.1 (2001) Article 29(1): The Aims of Education which notes: Human rights education should be a comprehensive, life-long process (paragraph 15.).

lives, fulfill their aspirations, build their skills and capacity, develop their full human potential and sense of dignity and self-worth, and participate fully in society.

13. Respondents noted the need for a non-exhaustive definition incorporating all areas of education, training, life-long learning and capacity building. Types cited included postgraduate, professional training, refresher and advanced training courses, continuous professional development, specialization, retraining, and internships. Inputs also highlighted tertiary education, retraining, digital and new technology-based education, self, informal, recreational and community-based education, life-long learning programmes, legal and health literacy, literacy, numeracy and technological competences. Responses highlighted the importance of basic education programmes, literacy and numeracy skills, school degrees, vocational training and apprenticeships. Inputs also noted the importance of education for gaining, maintaining, changing, upgrading or updating competencies or qualifications.

14. Responses observed important gender dimensions for older women including intersections between age and gender that are beyond the scope of existing standards. Those standards note that education should promote gender equality and avoid gender-based discrimination and stereotyping.¹³ For example, women who, not able to receive education due to child-rearing or other factors, may want to qualify for employment in later life. Similarly, gender-sensitive programmes that consider childcare or respite needs create equal opportunity of access. However, the educational needs of older women in the informal or gig economy, or approaching retirement were noted to be of continuing concern.

15. Respondents noted the importance of adequate and sustainable resourcing allocating specific resources to education, training, life-long learning and capacity building for older persons. Laws may not prohibit an older person's access to education, but government may not sponsor that education due to financial constraints. Inputs suggested resources should allow older persons to study based on their needs and aptitudes through appropriate methods, citing UNESCO standards.¹⁴ CESCR General Comment 6 notes older persons are particularly at risk in times of recession, restructuring of the economy, and times of severe resource constraints, and the duty to protect them includes, ensuring relevant budget support.¹⁵ Inputs suggested that older persons were largely ignored in budgetary allocations for education even though economic and health savings flow from their engagement in education.

16. Responses identified that the right has cultural and religious significance, including for indigenous persons.¹⁶ The right take part in cultural life is intrinsically linked to the right to education, through which individuals and communities, including older persons and community elders, pass on values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values.¹⁷ Inputs noted life-long learning is an integral part of culture and religious tradition and virtues. Education assists to learn, record, maintain, retain and pass on religious and cultural traditions between generations. Learning processes deepen understandings of the

¹³ UNESCO TVET (2015), Articles 7, 26.

¹⁴ UNESCO TVET (2015), Articles 21-23.

¹⁵ Paragraph 17-18.

¹⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (Article 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21; See also CESCR General Comment 13 para. 50. See also United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) (Doc. A/RES/61/295.) (Article 14); United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted 18 December 1992) (Doc. A/RES/47/135.).

¹⁷ General Comment 21, Paragraph 2.

scientific, technological, social, cultural, environmental, economic and other aspects of societies.¹⁸

17. Respondents articulated positive outcomes of education for older persons that inform normative definition. Education generally equips people with the necessary capabilities to exercise and realize their rights and take control of their destinies.¹⁹ Inputs highlighted that education of older persons contributes to personal and professional development, promotes greater societal and community interaction, promotes sustained and inclusive economic growth, reduces poverty, and improves health and well-being. Further, inputs observed education enhances older persons' ability to adapt to everyday life and social problems, promotes social inclusion, employability, active citizenship and personal fulfillment.

18. Capacity-building empowers independence and enables older persons to adapt to the rapidly changing world and to live autonomous and independent lives, fulfill their aspirations, build their skills and capacities, develop their full human potential and sense of dignity and self-worth, and participate fully in a multi-generational society. Older persons who continue to learn report heightened self-confidence, self-actualization, and community involvement, and reduced dependency on family and social services. Education also improves cognitive strength, enables older persons to utilize helpful products and services, fosters self-recognition, self-acceptance and maintains positive thinking that improves the quality of their life, which in turn prevents social marginalization and exclusion of older persons.

B. Scope of the Right: Key Normative Elements

19. Responses noted education is a multiplier right; it can unlock and increase enjoyment of other human rights. They noted the interrelated nature of key normative elements. For example, educational equipment must be available and accessible to older persons, adaptable to their use and of an acceptable nature and quality so as to provide education on an equal basis with others. Education is also a means to eliminate discrimination including ageism.²⁰

20. UNESCO's general normative considerations include policy, governance, financing, participation, inclusion and equity and quality. UNESCO suggested normative content of the right to education includes: aims of education;²¹ non-discrimination and equality; free and compulsory universal primary education;²² available and accessible, free education at the secondary level,²³ including vocational education;²⁴ accessible (on the basis of capacity) free education at the tertiary level;²⁵ fundamental (basic) education²⁶ for those who have not received all or part of their primary education;²⁷ and adult education and life-long learning.²⁸

¹⁸ UNESCO TVET (2015), Article 29.

¹⁹ UNESCO RALE (2015), Article 8.

²⁰ ICESCR Article 13 (1).

²¹ Aims of education are set out across a range of standards and align with the four pillars: learning to know, learning to do, learning to live together, and learning to be. Delors, J. 1996. *Learning: the treasure within: report to UNESCO of the International Commission on Education for the Twenty-first Century*. Paris. UNESCO.

²² ICESCR Article 13 (2) (a); CRC Article 28 (1) (a); CADE Article 4 (a).

²³ ICESCR Article 13 (2) (b). CESCR General Comment 13 para. 13-14. See Chapter 4, section 4.2.a for further information on progressive realization.

²⁴ UNESCO TVET; CESCR General Comment 13 para. 15.

²⁵ World Declaration on Higher Education for the 21st Century (adopted 9 October 1998) para. 2.; ICESCR Article 13 (2) (c); General Comment 13 para. 19.

²⁶ The term 'fundamental education' has fallen out of use in recent times and has been replaced by the term 'basic education'. CESCR has noted that fundamental education in general terms corresponds to 'basic education', as outlined in the World Declaration on Education for All (Jomtien Declaration, 1990). See UNESCO, *Right to Education Handbook*, p.109-110.

²⁷ ICESCR Article 13 (2) (d); CADE Article 4 (c).

²⁸ UNESCO RALE, para. 1.

UNESCO also includes provision of a fellowship system, the training of teachers (status and working conditions),²⁹ educational³⁰ and academic freedom,³¹ the freedom to set-up private schools, quality education (minimum standards regarding infrastructure and human rights education), safe and non-violent learning environments, the allocation of adequate resources, the setting and content of the curriculum, and transparent and accountable education systems. Despite the comprehensive nature of the UNESCO standards, few are specific to older persons' educational needs.

a) Availability

21. Availability means a sufficient quantity of functional programmes, locations, facilities (buildings, infrastructure, equipment, amenities such as sanitation) and services for older persons.³² Responses advocated availability for older persons must include all types, levels and modes of education.

b) Accessibility

22. Accessibility means programmes, facilities and services are accessible to older persons and includes elements of coverage, eligibility, affordability, participation and information and physical access. The elements are also described as non-discrimination, physical accessibility, economic accessibility (affordability) and information accessibility. Existing normative standards include human rights standards³³ and UNESCO standards, including literacy as the foundation for life-long learning and a key condition for realizing the right to education,³⁴ as affirmed by the Belem Framework.³⁵ Inputs raised non-discrimination as a key element given the vulnerability of some older persons, entrenched ageism within education systems³⁶ and that UNESCO Convention against Discrimination in Education (CADE) does not protect against age discrimination even through 'other status'.

23. Respondents noted specific impacts of age limits (for example fees, travel concessions, enrolment quotas or scholarships) that restrict access and participation. Several manifestations were noted, where discriminatory age limits (whether minimum or maximum) apply; where education was available without reference to age; and where positive discrimination occurred based on old age. Inclusive education must cover older students.³⁷ Physical accessibility is a significant barrier and reachable distance was critical. Locations must be accessible and rural or remote areas need specific normative inclusion. Inaccessible settings described include prisons, long-term care and residential homes. Transport issues included accessible transport (public and private), infrastructure (roads, railways) and contingencies (health, disability and financial status) that limit or prevent travel.

²⁹ CESCR General Comment 13 para. 6 (a).

³⁰ CESCR General Comment 13 para. 30.

³¹ CESCR General Comment 13 para. 38.

³² Article 13, International Covenant on Economic, Social and Cultural Rights; The Committee on Economic, Social and Cultural Rights (CESCR) has recommended these standards through several General Comments including 13, 14 and 19.

³³ CEDAW (Article 10), CRPD (Article 24), CESCR General Comment 13 paragraph 6(b)(i).

³⁴ UNESCO RALE, Para. 11, 2015 and UNESCO TVET.

³⁵ Article 4.

³⁶ Also supported by standards including UDHR (Articles 1-2), ICCPR (Article 26), ICESCR (Article 2), CRPD (Articles 4-6, 12), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (ICRMW) Article 1 (1), Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) Article 3.

³⁷ A/72/496, Report of the Special Rapporteur on the right to education, Koumbou Boly Barry - Inclusion, equity and the right to education, para 26.

24. Respondents cited normative standards on economic accessibility and affordability.³⁸ Common financial barriers include access to ICT equipment and infrastructure. Inputs suggested access is scalable from free to affordable depending on type or level of education. Affordability included enrolment or education fees, cost of materials, travel, transport and accommodation costs. Loss of productivity or earnings during seasons, harvest or market times were noted. Responses suggested information accessibility, material sensory accessibility, and older persons' broader issue of awareness of the use and relevance of education. Programmes must accommodate sensory decline (hearing and vision), make information available in alternative formats and enable better hearing through the use of microphones in classes, or more broadly the use of augmentative and alternative communication (AAC) methods.

c) *Acceptability*

25. Acceptability means programmes, facilities and services (in form and substance) are of quality, culturally appropriate, sensitive to gender and life-course requirements. Settings must be safe and non-violent. Quality is a dynamic concept that changes and evolves with time and social, economic, and environmental context.³⁹ UNESCO's general standards require periodical monitoring and evaluation and ensure quality by paying attention to the relevance, equity, effectiveness and efficiency of programmes. UNESCO's suggested methods to foster a quality learning environment remain vague in the context of older persons' educational needs.

26. Programmes should meet specific aims of education for older persons: develop abilities; address, enrich and improve necessary, contemporary skills; promote innovations to cope with changing technological learning needs; enhance quality of life after retirement; and be active and meaningful in long term care. Programmes need territorial and cultural relevance. Responses highlighted the importance of teaching standards and properly qualified teachers but also noted the need for specialization in older andragogy. Programmes should be accountable with grievance policies, procedures, and avenues for redress and remedy.

d) *Adaptability*

27. Adaptability means education is flexible and meets the needs of older persons within diverse social and cultural settings, and a diversity of older learners. Responses emphasized reducing dependency on traditional formal education structures to allow individual learning methods. Training in ICT to narrow the digital gap and address changing societal needs was critical. Adaptive learning and teaching should incorporate the delivery of custom learning experiences that address the unique needs of older persons. Programmes must be learner oriented, accounting for duration, communication needs, skills, motivation, and preferences.

28. Teaching and learning methods might include a range of modes: full-time, part time, correspondence, radio, web portals, massive open online courses, and open or single subject formats. Course timing and duration is important for older persons with family, caring or provider obligations. Materials should be easy for older persons to understand, be multicultural and multilingual, and adapted to the needs of specific communities such as older LGBTI persons. Inputs noted attitudinal barriers mean some older persons have self-negative

³⁸ ICCPR (Article 19.2).

³⁹ UNESCO. 2005. *Contributing to a More Sustainable Future: Quality Education, Life Skills and Education for Sustainable Development*.

attitudes about education; see themselves as too old, lack confidence or motivation or fear competition with younger people. Additionally, teachers and providers may have negative attitudes or rely on stereotypes about older people's ability to learn.

Other Key Normative Elements

29. Responses noted older persons participating as students, teachers and co-designers of sources of knowledge.⁴⁰ Standards recognize older persons' creative, artistic and intellectual abilities, and as the transmitters of information, knowledge, traditions and cultural values.⁴¹ Responses suggested mechanisms for remedy and redress when the right is denied or violated.⁴²

References to Existing Standards

30. Existing standards cited included human rights⁴³ and age-friendly platforms. UNESCO standards inconsistently address older persons and older age.⁴⁴ Inputs noted the evolving influence of regional standards on normative content in national laws, for example special programmes of certification for older persons' education.⁴⁵ Reports of the Special Rapporteur on Education are relevant but contain limited commentary on older persons' issues.⁴⁶

C. State Obligations

31. Inputs noted Member States' obligations are to take steps to the maximum available resources towards immediate and progressive realization of the right, and to also ensure non-retrogression. States obligations are collated under the tripartite typology of obligations to respect, protect and fulfill.⁴⁷

Measures to Protect

32. Measures to protect ensure third parties do not infringe upon the enjoyment of the right. Responses highlighted that Member States must regulate and supervise the provision of education by non-State parties, so it remains accessible, affordable and non-discriminatory, ensuring measures reach out to all older persons and their networks, identify

⁴⁰ UNPOP (principle 7), General Comment 21, ICHROP (Article 20(f)).

⁴¹ General Comment 21, paragraph 28.

⁴² ICCPR (Article 2.3).

⁴³ Universal Declaration of Human Rights (art 26), the International Covenant on Economic, Social and Cultural Rights (art 13/General Comment No.13), International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (Articles 18, 26); the Convention on the Elimination of All Forms of Racial Discrimination (Articles 5(e)(v) and 7), the Convention on the Elimination of All Forms of Discrimination Against Women (Articles 10 and 14(2)(d)/General Recommendation No.36), the Convention on the Rights of the Child (Articles 13, 17, 28 and 29/General Comment No.1), the Convention on the Rights of Persons with Disabilities (Articles 9, 21, 24 and 26/General Comment No.4), and the United Nations Principles for Older Persons (principles 4, 7, 16).

⁴⁴ UNESCO CADE does not mention age (Article 1) UNESCO TVET includes other grounds (art 2(3)) while UNESCO RALE makes specific mention of age (Article 23(b)).

⁴⁵ Inter-American Convention on Protecting the Human Rights of Older Persons⁴⁵ (Articles 4(b), 19(e), 20, 21, 32), African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (Doc. CAB/ LEG/67/3.) (Article 17) and the African Protocol⁴⁵ (Article 16) and European Convention on Human Rights and Fundamental Freedoms (Article 2 of the First Protocol).

⁴⁶ Relevant reports include: A/HRC/41/37 on private actors, A/72/496 on inclusion and equity, A/HRC/35/24 on non-formal education, A/71/358 on life-long learning, A/HRC/32/37 on challenges in the digital age, A/70/342 on public-private partnerships, A/HRC/23/35 on Justiciability and the right to education, A/67/310 on Technical and Vocational Education and Training (TVET), A/HRC/20/21 on Normative Action for Quality Education, A/HRC/17/29 on Equality of opportunity in education.

⁴⁷ Human Rights Comm., General Comment No. 31: "The Nature of the General Legal Obligations Imposed on States Parties to the Covenant", ¶ 6, UN Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004). See Fons Coomans' Matrix of state obligations relating to the right to education in Coomans F (2004) 'Exploring the normative content of the right to education as a human right: recent approaches' 50 *Personay Derecho* 60–100.

the needs of older persons, particularly vulnerable groups, and take due account of the multiple access barriers faced by them. UNESCO recommends promoting participation, inclusion and equity to avoid exclusion, considering offering co-financing and setting incentives to facilitate learning.⁴⁸

Measures to Fulfill

33. Fulfillment means taking positive steps to realize the right. The obligation requires Member States to adopt legislative, administrative, budgetary, judicial, and other appropriate measures towards the full realization of the right. It is generally understood to include obligations to facilitate, and to provide. UNESCO's RALE sets out areas of action on policy, governance, financing, participation, inclusion and equity, and quality.⁴⁹ Similarly, UNESCO's Technical and Vocational Education and Training (TVET) provides guidance on aims, policy development, governance and regulatory framework, social dialogue, private sector and other stakeholders' involvement, financing, equity and access, quality and relevance.⁵⁰ Neither standard addresses the position of older persons.

34. Inputs suggested obligations included ensuring no limits on access, creation of specific educational programmes, and engaging in institutional habilitation to remove ageism and implement specialist older-andragogic systems. Responses pointed to the state obligation to collect data to assist in understanding and responding to issues relating to protecting and fulfilling the right. Specific policies measures included public education policies, plans, programmes and projects, including awareness, with an intergenerational, rights-based, positive ageing approach to teaching and content.

35. Suggested Member State obligations to fulfill also included:

- (a) the obligation to create the necessary conditions to ensure equal access;
- (b) opportunity for scholarships, grants and mobility programmes;
- (c) systems and mechanisms to allow older persons to acquire knowledge;
- (d) reasonable accommodation of individual requirements;
- (e) elimination of negative ageist stereotypes and prejudices;
- (f) all forms of life-long learning, education and skills-building are available;
- (g) all forms are adapted to older persons' specific needs, skills, motivations, preferences and diverse identities;
- (h) sufficient funds are allocated;
- (i) offerings are in settings in which they choose to live, including in their communities and in care and support settings;
- (j) access to information about opportunities and how to access;
- (k) participation in processes regarding the shape and content of programmes; and
- (l) safeguards are put in place to protect against breaches of the right, including breaches of privacy and security of data.

⁴⁸ Article 21.

⁴⁹ Articles 11-28.

⁵⁰ Articles 5-52.

D. Special Considerations

36. In respect of special measures, respondents noted the importance of consultations with older persons and their representatives. Responses suggested evaluation of best-practice examples and review of existing regional standards to identify gaps for older persons.⁵¹

37. Specific considerations suggested were varied. Respondents noted specific educational areas for normative inclusion: gerontology,⁵² andragogy and ICT.⁵³ Responses recommended digital technologies and digital formats. The WHO noted the effectiveness of health literacy as a predictive factor for older people's use of preventive services. Respondents again noted gender issues, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation No.27, which notes "Employers often regard older women as non-profitable investments for education and vocational training. Older women also do not have equal opportunities to learn modern information technology, nor the resources to obtain them. Many poor older women, especially those with disabilities and those living in rural areas, are denied the right to education and receive little or no formal or informal education. Illiteracy and innumeracy can severely restrict older women's full participation in public and political life, the economy, and access to a range of services, entitlements and recreational activities."⁵⁴

38. Respondents noted longevity, in that people in the labour market must cope with longer working lives, and work in older age. Education must consider the current and changing needs of labor markets, with vocational training of particular importance. Respondents consistently noted ageism in the provision of education, including persistent stereotypes about the cognitive capabilities of older people and their usefulness in the labor market. Education creates positive perceptions of older persons including self-perceptions.

Responsibilities of Non-States Parties

39. Responses noted non-States parties have much to offer, including roles in developing, implementing and delivering programmes for Member States, and of their own accord. Non-States parties can offer programmes and activities that are affordable and sustainable and align with the national laws, policies and plans. Inputs noted mobilizing resources and older persons was a key role. Non-States parties can collaborate, coordinate and co-operate with governments to make education available to older persons.

40. Responses suggested that protection of the right included Member States engaging in supervisory and regulatory activities over non-States parties, including standard and quality setting, due diligence and monitoring, public awareness and providing avenues for redress and accountability. Specific suggestions non-States party employers and providers included actively approaching employee development at all ages and ensuring older persons are educated, skilled and productive, by specific inclusion of older persons in their own specific proposals, including in provision of education through private schools or foundations. Responses suggested non-States parties responsibilities included balancing public offerings, funding programmes to increase outreach, and representing and reflecting

⁵¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Article 19).

⁵² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Article 15(3)).

⁵³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Article 16).

⁵⁴ Paragraph 19. See also paragraph 40.

the goals of the government regarding diversity and inclusion through recruitment and diversity quotas.

41. The importance of strong public-private partnerships was highlighted. Non-governmental organizations noted where private sector faces difficulties it is the responsibility of the state to remove those obstacles. By way of example, supporting older workers in industries and regions impacted by industry transformation to transition to future jobs and assist older jobseekers develop skills and access training opportunities to re-enter the workforce. This could be achieved by working in partnership with non-States parties to broaden their accessibility and adaptability to better meet the education and training needs of older persons. Other examples included national laws that encourage employers, for example through tax subsidies, to develop and implement strategies for non-discriminatory workplace training opportunities, and for education and training providers to develop and implement complementary strategies to increase the participation of older persons. Responses noted that funding allocation rules to non-States parties should be transparent and fair.

E. Implementation

42. Respondents described a wide range of best practices, including adoption of regional and global frameworks on education, prioritizing the implementation of adult learning programmes in UNESCO's Global Education 2030 agenda and related declarations.⁵⁵ Inputs reinforced the importance of Sustainable Development Goal 4. in harmony with a human rights approach. A successful philosophy is that it is never too soon or too late for learning. Programmes that counteract conscious and unconscious bias and ageism were recommended. Specific learning environments were lauded, such as the University of the Third Age, open universities, or university study groups, lectures, cultural travel programmes, and intergenerational activities. Responses noted the success of home-based learning and 'street by street' programmes. Specific laws that stipulate content, quotas and flexible arrangements, and specific national strategic policies including round-tables and advisory councils were highlighted.

43. Effective national programmes included community education projects, facilitating the transmission of traditional crafts and knowledge between generations, and designing sociocultural projects aimed at facilitating ICT access for older persons. These included ensuring access to ICT devices with an age-friendly interface and specific education facilities for older persons.⁵⁶ Responses noted successful partnerships between Member States and non-State parties for outreach to isolated or vulnerable older persons. Inputs underscored that development goals align well with education that encouraged and engaged senior entrepreneurship and self-employment. Good practice included effective use of existing infrastructure and national assets (such as libraries, museums, exhibitions) for educational purposes. Integrating education into existing social programmes was also recommended.

44. Many challenges echoed those in the previous session's working document. Respondents cited poverty, the absence legal protections, government funding and infrastructure capacity, paucity of data on older person's educational attainment, and

⁵⁵ Incheon Declaration: Education 2030: Towards inclusive and equitable quality education and lifelong learning for all and the Belem Framework of Action.

⁵⁶ National education centers, associations, active ageing centers, community centers, public training centers, technical training schools, senior citizens centers, adult education centers, senior education centers, functional literacy missions, and senior welfare centers, literacy centers, including those established under national law.

mainstreaming of education services for older persons, such as inclusion in 2018 Brussels Declaration on Global Education. The generational digital divide and access to digital education were noted as critical challenges, including finding flexible service structures to reach and animate older persons unfamiliar with digital media. Ageism inherent in the idiom “you can’t teach an old dog new tricks” continues to impact on protection of the right for older persons. Counteracting ageism included the need to break stereotypes and prejudices about the older persons and establishing educational policies specifically aimed at sustainable training, with methodologies consistent with older persons needs.

45. Inputs noted that older persons own attitudes remain a challenge. This included older persons feeling too old to learn or they have learnt enough in school, thereby hindering a national culture of life-long learners. Some older persons lack of interest in technology and its systems, experience loneliness and feel marginalized, hence the importance of creating awareness and making training attractive. Ensuring the normative elements are linked to labour market participation was critical, as is ensuring education centers designed to help older persons develop hobbies or spend their leisure time also develop expertise or professional skills. Promoting the heterogeneity of old age and including a gender perspective are still challenges. Political upheaval and migration flow also bring challenges for literacy and basic education. Non-governmental organizations suggested investments in education infrastructure remained a challenge.

III. Social Protection and Social Security (including social protection floors)

A. Definitions in National Laws

46. Respondents described various constitutional descriptions of the right to social protection and social security (including social protection floors) covering scope, definition, recognition and protection. Inputs noted various forms of constitutional recognition, referring to regional instruments⁵⁷ and complementary national laws. General and specific guarantees inconsistently protect older person’s rights to social security, social protections, social assistance, social pensions and social insurance. Descriptions of social security and social protections have a high degree of inconsistency and include welfare, health and medical care, medicines, mobility aids, dental services, veterans’ services, care and special assistance for degenerative diseases or those that predominantly affect older persons, education, clothing, housing, reasonable rest, recreation and leisure, food and subsidies, school stipends and free, subsidized or discounted transport and various user fee exemptions.

47. Specific guarantees are expressed as being free, universal, subsidized and affordable. Some constitutional guarantees are limited by the State’s resources and priorities, others are described as comprehensive and inalienable. Special guarantees of social protections to older persons are in generally consistent terms such as requiring provision for old age, including care and pensions. Details included the right to material and financial assistance or basic subsistence or to ensure a standard of living in old age not lower than the minimum living standard established by law. Constitutional guiding principles include solidarity, obligation, universality, equity, efficiency, subsidiarity, sufficiency, transparency, and participation.

⁵⁷ Inter-American Convention on Protecting the Human Rights of Older Persons (Articles 3(g), 17); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa (Articles 5(2), 7, 12) – See Ghana; European Pillar of Social Rights (principle 15) – see EU; Treaty on the Functioning of the European Union (Article 153); EU Charter of Fundamental Rights (Article 34(1)).

48. Constitutions establish pensions of various types based on age and other contingencies such as retirement or undeserved want. Some specific guarantees are premised on older persons needing or deserving special attention or protection. Constitutional descriptions also reflect the obligation of families to provide social protections for older persons. Constitutions set out obligations for States to minimize inequalities in income, and eliminate inequalities in status, facilities and opportunities.

49. National laws and policy schemes guarantee the right with diverse measures, including contributory and non-contributory schemes, types of insurance, assistance, savings or investment (with and without guaranteed returns) and combinations. The application of principles differs regionally, transnationally and within State boundaries and lacked harmonization. Inputs described the aims and outcomes of social security including to enhance the capacity and opportunities of older persons to improve and sustain their lives, livelihoods, and welfare, and ensure access to affordable healthcare, social security and social assistance and support self-sufficiency to ensure happy and dignified lives and create the conditions conducive to social participation, self-realization and social integration. National policies are used to target social protection floor interventions such as cash transfers depending on age or income status. Inputs noted the application of policy was inconsistent across groups of older persons.

50. Responses described the extent of combination approaches. National statutory social insurance schemes provide benefits dependent on individual circumstances and class of social insurance adopted and in some, those without social insurance benefits might access equivalent payments in universal or means-tested schemes. Social protections generally incorporate mandatory and voluntary insurance and social assistance providing basic income support in old age. Under social protection floors, older persons get cash benefits if unemployed and without insurance. Social protection is mercurially described but includes all public and private initiatives that provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks and enhance the social status and rights of marginalized groups. National laws prescribe mandatory minimum retirement ages for public and private sectors linked to statutory pensions, with eligibility for pensions dependent on circumstances and employment history. National laws provide social protection and social security to older persons based on contingencies including age, retirement, disability, survivorship and others.

How should such a right be defined?

51. Responses suggested a wide range of measures should fall within the definition, including basic social security, social security, social protections and social protection floors. Programme types include social insurance, contributory pensions (means tested and not), non-contributory pensions (universal, means tested and not), mandatory occupational, provident funds and individual accounts. Old age pensions are the most widespread form of social protection in the world, and a key element of Sustainable Development Goal target 1.3. Globally, 68 per cent of people above retirement age receive a contributory or non-contributory pension, dropping to below 20 per cent in low-income countries.⁵⁸ The ILO noted 39 per cent had only contributory schemes; the majority of which were social insurance schemes, mainly covering employees and self-employed. A combination of contributory and

⁵⁸ 2017-2019 World Social Protection Report, p.75; ILO: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) Universal social protection for human dignity, social justice and sustainable development ILO Report III (Part 1B), International Labour Conference, 108th Session, Geneva, 2019, p.viii.

non-contributory schemes is the predominant form of organization of pension systems in the world, though combinations are diverse. Non-contributory schemes varied between the least common - universal, to most common - means tested.

52. Responses commended ILO's normative social security framework of conventions and recommendations as a starting point.⁵⁹ Convention No.102 generally frames social security benefits payable to older persons, based on age (old-age) or circumstances (medical care, sickness, unemployment, employment injury, family benefit, invalidity, survivorship). Convention No.128 specifically describes old age benefit for those 65 years (or higher given demographic, economic and social criteria), and sets out key criteria: qualifying period, by contributions or by flat-rate non-contributory pensions (universal or means-tested).⁶⁰ Recommendation 202 calls for the guarantee of basic income security to all persons in old age with eighteen key principles, prioritizing those in need or not covered by existing arrangements.⁶¹ Inputs also referred to the International Covenant on Economic, Social and Cultural Rights (ICESCR) General Comments on Member States obligations on housing, older persons, food, health, gender and non-discrimination, work and social security.

53. ILO social security standards provide baseline normative standards for national old-age pension systems. They aim for extension of coverage and universality of protection. They require guaranteed minimum benefit levels to older persons (of pensionable age) through earnings-related contributory pensions, or prescribed replacement rates, or by flat-rate non-contributory pensions. Non-contributory pensions include universal schemes that ensure that every individual above a given age receives a pension and targeted schemes that select beneficiaries on the basis of their income or poverty level and their age.⁶²

54. The guaranteed minimum levels for non-contributory pensions are set at a prescribed proportion of the average earnings of a typical unskilled worker, and sufficient to maintain the family of the beneficiary in health and decency. Social protection floors guarantee at least a basic level of social security to all, ensuring, at least, effective access to essential healthcare and basic income security. Basic social security guarantees basic social transfers in cash or in kind to all without defining benefits. Guarantees are realized by means-tested, conditional or universal transfers. Benefits mostly have the characteristics of social assistance rather than social security benefits and are commonly financed through general taxation. The ILO suggests health protection, for instance, through vouchers or in cash, to allow older persons in need of long-term care to create an enabling living environment.⁶³

55. ILO Recommendation 202 suggests normative principles of universality of protection, adequacy and predictability of benefits, non-discrimination, gender equality and responsiveness to special needs, social inclusion (including informal economy), respect for the dignity of people covered by the social security guarantees, social dialogue and social

⁵⁹ Income Security Recommendation, 1944 (No. 67), Medical Care Recommendation, 1944 (No. 69), Social Security (Minimum Standards) Convention, 1952 (No. 102), Equality of Treatment (Social Security) Convention, 1962 (No. 118), Employment Injury Benefits Convention, 1964 (No. 121) and Recommendation, 1964 (No. 121), Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and Recommendation, 1967 (No. 131), Medical Care and Sickness Benefits Convention, 1969 (No. 130) and Recommendation, 1969 (No. 134), Maintenance of Social Security Rights Convention, 1982 (No. 157) and Recommendation, 1983 (No. 167), Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and Recommendation, 1988 (No. 176), Maternity Protection Convention, 2000 (No. 183) and Recommendation, 2000 (No. 191), and Social Protection Floors Recommendation, 2012 (No. 202). These instruments are reproduced in the compendium *Building social protection systems: International standards and human rights instruments* (Geneva, ILO, 2017).

⁶⁰ Article 15. Note 3. If the prescribed age is 65 years or higher, the age shall be lowered, under prescribed conditions, in respect of persons who have been engaged in occupations that are deemed by national legislation, for the purpose of old-age benefit, to be arduous or unhealthy.

⁶¹ See paragraphs 3(a)-(r) and 5(d).

⁶² A/HRC/14/31, paragraph 59.

⁶³ ILO: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) Universal social protection for human dignity, social justice and sustainable development ILO Report III (Part 1B), International Labour Conference, 108th Session, Geneva, 2019, p.88.

participation. ILO General Surveys provide important context.⁶⁴ The 2019 General Survey noted key normative issues for older persons include defining statutory pensionable age in a changing world, differences in pensionable age on the basis of gender and improving employability in older age.

56. Social protection floors were motivated by findings that 80 per cent of the world's population of older persons lacked access to any kind of social security. Their policy design is anchored in the right of everyone to social security and a basic standard of living that guarantees their health and well-being.⁶⁵ The Independent Expert on the Question of Human Rights and Extreme Poverty reported that social protection can be divided in two main segments: social insurance and social assistance. Social insurance refers to all contributory insurance schemes providing pre-specified support for affiliated members in the event of contingencies including old age. Social assistance encompasses all initiatives providing both cash and in-kind assistance to those living in poverty; these are often financed by general taxation revenues or external aid. Social pensions consist of cash benefits received by persons above a given age without the requirement of compulsory contributions; they are essential components of social assistance.

57. The WHO noted social protection allows older persons to manage financial risks and protect themselves from poverty and should address adequate financing for long-term care services for older persons. The ILO observed that in the future unpaid family care will be insufficient, making long-term care important when defining essential healthcare in the context of adequate social protection floors.⁶⁶ The Food and Agriculture Organization (FAO) noted social protection is a core pillar to reduce rural poverty, achieve zero hunger and promote resilient livelihoods and encouraged normative content to enhance coverage in rural areas, considering age and livelihood vulnerabilities.

58. The European Union's Proposal for a Council Recommendation on access to social protection for workers and self-employed is a recent regional standard. It includes old age and seeks to allow non-standard workers and self-employed to adhere to social security schemes (closing formal coverage gaps); take measures allowing them to build up and take up adequate benefits as scheme members (adequate effective coverage), facilitate the transfer of benefits between schemes and increase transparency regarding social security systems and rights.

59. Responses suggested a range of other definitional qualities, including combating social exclusion, consistency with existing human rights standards as a baseline, and ensuring equal access for vulnerable groups. Inputs suggested the definition should comprise any government or public system that provides monetary assistance to older persons with inadequate or no income. Critical normative values include high quality, efficiency, safety of members funds, meet basic needs: to learn, grow, make decisions, be mobile, build and maintain relationships and to contribute. Inputs suggested normative content should broadly guarantee an adequate standard of living, adequate income security, access to healthcare, medication and assistive devices, and access to care and support services for autonomous

⁶⁴ See also ILO: 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; ILO: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) Universal social protection for human dignity, social justice and sustainable development ILO Report III (Part 1B), International Labour Conference, 108th Session, Geneva, 2019.

⁶⁵ E/2013/82, paragraph 34.

⁶⁶ ILO: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) Universal social protection for human dignity, social justice and sustainable development ILO Report III (Part 1B), International Labour Conference, 108th Session, Geneva, 2019, p.93.

and independent life in older age and to ensure dignity and full participation in society. Normative content should address capability deprivation (inadequate nutrition, lack of employment, low education), and provide a safety net for contingency risks (health hazards, death, disability).

60. Social protection floors are of particular importance for older persons, help reduce vulnerabilities, and enable them to enjoy their rights.⁶⁷ They include mechanisms across the entire life-cycle, fill social protection gaps and balance social assistance, social security and minimum income security for older persons. They reduce poverty and improve people's capacity to manage risks. Social protection is crucial to secure older person's income and overall wellbeing – an objective of the Madrid International Plan of Action on Ageing.

B. Scope of the Right: Key Normative Elements

61. Responses noted intersections with other human rights such as adequate standard of living, health, housing and education.⁶⁸ For example, the positive impact of social protection initiatives on older persons' standards of living can be nullified by the burden posed by health-care-related costs.⁶⁹ Responses revealed existing national systems are complex multi-layered structures, with various descriptive nomenclature, without obvious consistency. Terms used included pension provision, social insurance, social security, social assistance, social welfare, social protection. Contribution schemes included voluntary and obligatory/mandatory models depending on statutory basis, employment or employer type (public or private or self) or circumstances (informal or gig economy). Non-contributory schemes varied in scope and eligibility and entry requirements. Respondents described the utility of a combination approach for older persons, as complementary and mutually reinforcing aspects of social protection.

62. Combined systems were contributory (voluntary, mandatory, regulated, state worker schemes, privately managed schemes) and non-contributory (universal, subsidized) schemes in blends of differing values. Inputs suggested a balanced range of options is needed to meet the needs of older persons including those who can, and those who cannot contribute. Responses noted disparities between those in the formal economy who take advantage of contributory schemes and older persons in poverty. Inputs noted overlap between normative elements, for example, coverage involves availability and accessibility.

a) Availability

63. ILO's basic availability standards include ensuring benefits in older age. Key features include a criterion for pensionable age, qualifying period, scope of coverage and the form, duration, and level of benefits. The two-dimensional approach to coverage, includes national extension strategies that secure at least minimum levels of basic income security, and access to essential healthcare guarantees. Old-age benefits should be provided through the most effective and efficient combination of schemes and benefits, in cash or in kind, pursuant to the national context. The design and implementation of complementary, aligned social insurance and social assistance benefits, should have the common objective of alleviating poverty and social exclusion. Making non-contributory schemes available is critical for older persons without access to contributory schemes. Coverage can also be

⁶⁷ See A/69/297, paragraph 23.

⁶⁸ See also Magdalena Sepúlveda and Carly Nyst *The Human Rights Approach to Social Protection*, 2012, p.11.

⁶⁹ A/HRC/14/31, paragraph 90.

extended to those with elder care responsibilities. ILO noted the importance of contributory schemes as they provide pensions relative to previous earnings and may constitute a better form of income security for some older persons. Systems should be established under domestic law, and public authorities must take responsibility for the effective administration and supervision.

64. Responses revealed that availability varied widely, from countries without non-contributory schemes through to examples of advanced system design with complementary systems of contributory, non-contributory, health and related benefits. Levels of benefits are determined in a multitude of ways, but often based on contributions or in non-contributory schemes on age or means. In some cases, social security systems are sought to be offset by social policy measures such as filial piety laws, particularly where widespread migration is causing a substantial decrease of co-residence of older persons with their younger families.⁷⁰

65. Significant gender gaps impact on effective coverage for older women.⁷¹ Some Member States use differential age requirements, paying older women at a younger age. Gender bias in access to social security is a result of many women not having been able to consistently and sufficiently contribute to pension insurance schemes during their working lives, for reasons including gender inequalities in access to the labour market, career gaps due to maternity or care for a family member, including with dementia, the unequal sharing of care responsibilities between men and women, the persistent gender gap in earnings, and a higher exposure to informality and non-standard forms of employment. ILO recommends measures that redress gender imbalances, such as credited social insurance contributions to make up for career gaps and protected benefit entitlements during periods of leave due for maternity or care of a family member. Social pensions help address the particular vulnerabilities of older women, particularly for those who do not qualify for a contributory old-age pension, or whose benefits from contributory pensions are too low to ensure life in health and dignity.⁷²

66. The age (including pensionable age) that social protection and social security (including social protection floors) are payable affects availability and accessibility and varied significantly. ILO Convention No.102 suggests 65 years or higher depending on the working ability of older persons within a country. ILO reports eligibility ranges from 55 to 68 years.⁷³ Increases in pensionable age above 65 years should be justified by a rise in the average life expectancy of society as a whole, and should also take into account differences between the various groups of the population in health status, life expectancy, working ability and the labour market opportunities of older persons.⁷⁴ Universal, non-contributory social security was generally age limited (including stepped, scaled or rising) with examples of eligibility commencing from 55 through to 85 years. Age requirements for contributory schemes also varied from no age depending on contributions from 55 through to 75 years. Age of access to contribution determined whether penalties or exited fees were payable. In some cases, public servants had lower age limits than the general population. Warnings suggest if the age requirement is too high, including as an austerity measure, it may be

⁷⁰ A/HRC/14/31, paragraph 22.

⁷¹ CEDAW General Recommendation 27, paragraphs 12, 20-24, 32, 43, 45 and 47-48.

⁷² A/HRC/14/31, paragraph 33.

⁷³ ILO: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) Universal social protection for human dignity, social justice and sustainable development ILO Report III (Part 1B), International Labour Conference, 108th Session, Geneva, 2019, pp.194-195.

⁷⁴ ILO: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) Universal social protection for human dignity, social justice and sustainable development ILO Report III (Part 1B), International Labour Conference, 108th Session, Geneva, 2019, p.195.

regressive, and could predominantly benefit better-off in society.⁷⁵ Social protections (e.g. cash transfers) also used inconsistent age targets.

67. Contributory schemes rely on varied inputs from employer, employee, members, Member States or combinations thereof. Responses revealed a myriad of scheme inconstancy and differentiation, including contribution requirements such as amounts, rates (fixed, scalable and capped) matching arrangements, contribution duration, mandatory rates, and scalable contributions based on earnings, tax concessional status and payments (fixed, variable, capped duration or period).

b) Adequacy

68. The ILO suggested adequacy includes particular normative elements: adequate old age pensions; effective access to healthcare; and benefits, whether in cash or in kind, must be adequate in amount and duration to realize an adequate standard of living.⁷⁶ For social protection floors, adequacy means that guarantees should prevent or at least alleviate poverty, vulnerability, and social exclusion, and allow life in dignity. Non-contributory pension schemes can be effective for poverty reduction, if they, together with other support measures, are not below the accepted poverty line or monetary value of necessary goods and services. Adequacy depends on the level of cash benefits provided, and the cost of essential services, such as healthcare, long-term care, education, food, housing and transport.

69. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) emphasized linkages between pension benefits, health and long-term care – for example, by ensuring that out-of-pocket payments required for care and long-term care, do not jeopardize adequate income security. 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. The CEACR has underlined the importance of transparent procedures for regular review of Recommendation 202 guarantees, including tripartite participation and consultation.

70. Adequacy was highly variable, from basic cash transfers being the only form in some places, through to universal non-contributory schemes that were regularly increased to meet the increasing costs of living. Adequacy includes scope of benefits, which varies significantly between and within systems. In respect of level of payments, respondents observed that some existing systems were only partially adequate and older persons needed to continue working to support themselves financially. ILO recommends levels are regularly reviewed through transparent procedures established by national laws, regulations or practice, and that tripartite participation occur. In some cases, no regular updating occurred, whereas others noted updating mechanisms such as pension reviews, periodic adjustments, policy assessments, using inflation variation or wage increases or both, indexation, and one-off payments.

c) Accessibility

71. Key normative elements of access include coverage, eligibility, withdrawal and access. Responses suggested all older persons should be covered by social security systems, hence the importance of non-contributory schemes. Universal social protection is central to

⁷⁵ See for example A/HRC/14/31, paragraph 88.

⁷⁶ See also A/HRC/14/31, paragraph 87.

the 2030 Agenda, including Sustainable Development Goal target 1.3 to implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and vulnerable. Sustainable Development Goal target 1.3 echoes Recommendation 202, which seeks to ensure at least a basic level of social security for all older persons in need, and essential healthcare through nationally-defined social protection floors.

72. Coverage of contributory schemes was limited in some instances, (public servants or the formal private sector) thereby leaving large groups of older persons such as the informal sector uncovered. Other limitations include inability to afford contribution, and scheme limits by size of employer. Voluntary contributory schemes can lack uptake for lack of awareness and trust. The existence of social security moratoria attracted high coverage. In respect of eligibility, qualifying conditions for benefits must be reasonable, proportionate and transparent. ILO standards establish internationally agreed qualifying conditions for access to medical care and old-age benefits. Eligibility criteria for older persons might include criteria concerning income, family situation, financial situation, age and disability. Non-contributory old age pensions each had idiosyncratic procedures and provisions for eligibility, often fixed by national law. Means testing was common especially where fully tax-financed. Inputs noted residency requirements. Convention No.102 prescribes treatment of non-national residents under both public and contributory schemes.⁷⁷ Requirements varied from 1 year to 5 years, to full citizenship.

73. The withdrawal, reduction or suspension of benefits should also be based on grounds that are reasonable, subject to due process, and set by national law.⁷⁸ Benefits should be provided in a timely manner and older persons should have access to services in order to access benefits and information and make contributions. Processes and procedures for accessing pensions should be decentralised, simple and dignified. Conditions that require the production of identity documents, can put older women, in a disadvantaged position. Older persons limited physical strength, transport, loss of labor time, illiteracy and linguistic barriers and mobility should all be considered. Access is limited where benefits are not portable, or where older persons needed to travel long distances to collect.

d) Equitable Access

74. Recommendation 202 highlights principles of social inclusion, non-discrimination, gender equality, responsiveness to special needs and respect for the rights and dignity of persons protected in developing and implementing comprehensive social protection systems, including social protection floors.⁷⁹ Responses indicated that normative elements should identify vulnerable groups of older persons, including older women, older persons with age-related disabilities and illnesses, older persons affected by HIV/AIDS and those caring for and supporting affected family members, older persons in rural areas,⁸⁰ older persons in non-agricultural informal employment, carers, those living alone, or in care settings. Some inputs indicated that benefits are paid at a higher rate to some groups such as war veterans. Additional examples noted targeted and integrated social protections for vulnerable groups such as homeless older persons.

⁷⁷ Defined at Article 1(b).

⁷⁸ See also A/HRC/14/31, paragraph 80-81 and Convention No.102.

⁷⁹ Paragraph 3(d), (e) and (f).

⁸⁰ The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas is relevant and includes the right to social protection and social security (including social protection floors) (Article 22).

e) Participation

75. Responses insisted that older persons fully participate in the design of programmes but noted participation did not always occur. The ILO's normative standards indicate participation in decision-making through national social dialogue is the most effective method of achieving equitable progress, including toward meeting Sustainable Development Goals 1 and 3. Recommendation 202 sets a range of expectations for participation. It emphasizes the importance of broad, inclusive and effective social dialogue, and social participation involving all stakeholders including the State, social partners, representative and relevant organizations of persons concerned. It also emphasizes the importance of an enabling legal and institutional environment to promote effective social dialogue and social participation. Recommendation 202 requires transparent procedures for the regular review of the basic social security guarantees, with tripartite participation, and consultation with the representatives of persons concerned, including the establishment and review of the levels of the basic social security guarantees that form part of social protection floors, the formulation and implementation of national social security extension strategies, and assessment of progress.

76. Convention No.102 and other ILO standards include the need for representatives of older persons to participate in the governance and administration of schemes or to be consulted, whenever the administration is not entrusted to an institution regulated by public authorities or to a government department responsible to a legislature. Meaningful participation means that systems 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.⁸¹ Inputs suggested ensuring participation platforms for older persons to contribute to the decision-making process regarding social protection

77. Participation examples included representation of older persons on institutional boards and governance roles to guarantee participation in the discussion on programmes. Participation models include engaging with older beneficiaries, older persons councils, stakeholder groups, consultative bodies, and advisory committees. Inputs noted the option of political representation in Parliament. Inputs noted that Non-governmental organizations often facilitate systemic consultations with older persons.

References to Existing Standards

78. A range of normative standards were raised, including the Universal Declaration of Human Rights guarantee of the right to social security in old age, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The ILO's normative framework of 31 Conventions and 23 Recommendations have guided the development of social security worldwide since 1919. Responses noted General Comment 19 on older person's right to social security in old age. Regional frameworks were also cited in responses.⁸²

⁸¹ See also A/HRC/14/31, paragraph 83-84.

⁸² The East African Common Market Protocol, the Ouagadougou Declaration and Plan of Action, the Livingstone Call of Action (2006) and the African Union Social Policy Framework (2008); Association of Southeast Asian Nations, Kuala Lumpur Declaration on Ageing: Empowering Older Persons in ASEAN, *available at* <https://www.asean.org/> (last accessed Nov. 8, 2019).

C. State Obligations

79. A key social policy challenge for Member States is to secure an adequate level of income for older persons without overstressing the capacities of younger generations. ILO noted in view of the financing and sustainability challenge faced by social security systems, Member States have 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.

Measures to Protect

80. Measures to protect ensure third parties do not infringe upon the enjoyment of the right. Responses noted the importance of strong national laws, effective regional and municipal processes, policing compliance with contribution schemes and targeting insurance evasion. Respondents noted the need to ensure there is no gap in the rights protection chain for the older persons. This complements Member States responsibility to strengthen existing family support mechanisms for the protection of older people.

81. Fulfillment means taking positive steps to realize the right. It includes steps to facilitate, promote and provide. Member States are generally prohibited from deliberately taking any retrogressive measures. States cannot rely solely on contributory systems for old-age pensions and should have a non-contributory pension system in place. Responses identified the need for a safety net for the informal sector, noting its size in most developing countries. Responses noted growing job instability and the spread of poorly paid, precarious work, means contributory pensions are unlikely to guarantee income security for all older persons. National human rights institutions suggested contextual issues for Member State fulfillment include changing demographic conditions, ageing in place, services in the area of dementia care, gender sensitivity, the informal sector, and the need for flexible retirement age.

82. Other fulfillment measures suggested included:

- (a) sustainable financing strategies;
- (b) efficient programme implementation;
- (c) extending coverage and budgetary allocations particularly to the most vulnerable;
- (d) developing integrated data systems;
- (e) promoting education and awareness of rights and obligations; and
- (f) addressing wider policy issues such as the demographic ageing of populations, evolving family structures, and the impact of economic globalisation.

D. Special Considerations

83. In terms of specific measures, respondents suggested that the need for national laws to facilitate the right. In some countries distinct laws and systems regulate contributory and non-contributory schemes, while others have all-encompassing statutes. A sufficient legislative basis is necessary and weak measures should be avoided.⁸³ To comply with core

⁸³ A/HRC/14/31, paragraph 54.

human rights principles, legal and institutional frameworks, should articulate eligibility requirements, provide for mechanisms to ensure transparency and access to information about programmes, define the various roles and responsibilities of all those involved in implementing the programme (for example, Governments at the national and local levels, international organizations and civil society organizations), and establish accessible complaints mechanisms including access to justice and judicial decision-making. Finally, they should set participation channels for beneficiaries.⁸⁴

84. In terms of specific considerations, responses noted that programmes should be evidence based, rights based and reflect social justice values. Programmes should be flexible and consider personal and different circumstances of older persons including income, existence of relatives, geographic location, traditional aspects of their way of life, the differing needs of groups in vulnerable situations, policy impacts on indigenous older persons, older persons with disability, older women, culturally and linguistically diverse communities, older persons deprived of liberty or recently released from places for the deprivation of liberty, abandoned older persons, stateless older persons and older persons in crisis or conflict situations. Responses noted the impact of crisis and austerity on older persons, particularly when forced into early retirement, with inadequate savings, and unable to access social protections and find or undertake work.⁸⁵ The importance of independent living in familiar surrounds and complementary access to adequate necessary healthcare was also noted. Intergenerational equity and scheme sustainability are important ongoing considerations. Responses noted that financial exclusion was a specific consideration, as older persons become less able to rely on income from employment. Private savings and assets (including housing ownership) and private, intra-family transfers provide security, but may not be sufficient to guarantee adequate income security in older age.

Responsibilities of Non-States Parties

85. Responses suggested Member States should define responsibilities in national laws. Respondents noted the importance of corporate social responsibility, non-States parties' role in access, mobilizing resources, providing technical support, promoting rights, and ensuring Member States own compliance with human rights standards. Key responsibilities also included partnering with non-governmental organizations, enhancing existing public-private partnerships, facilitating access to employer schemes, and facilitating access as service providers including (improving mobility, health, accommodation, leisure and physical activity). Additionally, non-States parties must ensure non-discriminatory actions, comply with human rights and legal obligations or agreements for statutory pensions or voluntary investment into pension schemes or social insurance funds. Promoting research and policy development, advocacy and public debate on social protection and social security (including social protection floors) were also suggested.

86. Responses suggested using senior citizens associations, national councils, and intergenerational self-help clubs for consultation, training, road-shows and project delivery. This included sustainable, self-managed, capacity building programmes such as micro-lending. However, non-States party roles cannot be considered a substitute for social protection mechanisms under the primary responsibility of the State.

⁸⁴ A/HRC/14/31, paragraph 56.

⁸⁵ See E/2013/82, paragraphs 66-68.

E. Implementation

87. Responses noted that best practices are often intertwined with main challenges. The suggested implementation of best practice included a wide breadth of issues:

- (a) Disaggregated data on social protection by age to inform implementation of social protection measures;
- (b) Increase old-age pension coverage for self-employed and informally employed;
- (c) Extend health coverage to include quality services, such as comprehensive assessments, care planning, assistive devices, and physical rehabilitation and provide financial supports to increase affordability of home care, long-term care, and informal care;
- (d) End age discrimination in the workplace, adequate minimum wages for workers of all ages, age-relevant social protection policies, and universal unemployment insurance;
- (e) Public housing policies that consider the needs and income status of older persons, safeguarding access to adequate heating, lighting, food storage, sanitation and clean drinking water, as well as legal protection against forced evictions and harassment;
- (f) Adequate and affordable quality health services, including basic health literacy training, as well as long-term care facilities; and
- (g) Expanded social protection measures to break the cycle of intergenerational poverty.

88. Respondents gave examples of best practices across a wide range of subjects of relevance. The ILO noted a trend in developing countries of the proliferation of non-contributory pensions, including universal social pensions. This is occurring in countries with high levels of informality, facing difficulties in extending contributory schemes. Trends show that many countries are succeeding in introducing a universal floor of income security for older persons. Best practices included awareness raising using community committees and media (television and radio including multilingual). For contribution schemes, targeting voluntary contribution from individuals in the informal sector, credits for older women towards years of contributory service for children born and for work outside the country for older persons.

89. The WHO's Global Strategy emphasizes the importance of national mechanisms, including sustainable financing models, to ensure that older persons, their carers and family can access services without financial burden. Moves to create dedicated Ministries, Departments and national schemes were lauded. The Social Protection Floor - Initiative Coalition has been created to support countries with the establishment, expansion and edification of their national social protection floors. Mapping trends in social security helps assess whether reform is needed. Other practices including introducing concessional rates for healthcare and improving review and appeal systems for social security disputes. Inputs noted the adoption of national, normative frameworks on social security that view experience, knowledge and skills of older persons as social assets and ensure their active participation.

90. The ILO summarized the key challenge in its World Social Protections Report. The main challenge for countries with comprehensive and mature systems of social protection, with ageing populations, is to maintain a good balance between financial sustainability and pension adequacy. At the other extreme, many countries around the world are still struggling to extend and finance their pension systems; these countries face structural barriers to

development, high levels of informality, low contributory capacity, poverty, insufficient fiscal space, among others. ILO also noted austerity or fiscal consolidation trends affect the adequacy of pension systems and general conditions of retirement including fulfilment of the ILO minimum standards. Adequacy of cover and expanding coverage through expanded criteria for assistance, including complementary healthcare, long-term care and dementia care remains a key challenge. Also noted was a lack of coverage for those who do not have a stable or definitive working relationship, changes in the demographic and work structure, limitations on economic sustainability, rational use of resources, and political intervention on the institutions that handle social security.

91. Overall, many countries provide some social protection programmes for health, education and pensions; however, universal coverage is lacking, and the coverage and efficacy of those programmes vary for older persons. In most countries social protection is contributory and primarily covers old-age, survivorship, invalidity and employment disability. Contributory social protection systems face significant challenges that reduce efficiency, including low coverage, financial unsustainability, narrow economic base, and fragmentation. Non-contributory social protection mostly consists of universal subsidies, and other forms of social assistance and non-contributory health-care services remain very limited.

IV. Conclusion

92. This working document has focused on the normative elements put forward in submissions made to the eleventh session of the Open-Ended Working Group. The normative elements set out above are wide ranging and numerous. How this should be addressed in order to produce a shorter though no less comprehensive text is a matter that the Open-Ended Working Group may wish to consider at its future sessions.