

HelpAge International Submission on the Normative Content of Social Protection and Social Security (including social protection floors)

11th Working Session of the Open-ended Working Group on Ageing, 2020

Question 1: Definition

Older persons have the right to social protection and social security without discrimination based on age or any other ground, so they can live with dignity and fully participate in society.¹

Question 2: Scope of the right

Autonomy and independence

Older persons have the right to unconditional, autonomous use of income and in-kind entitlements from social protection and social security schemes.

Availability

Older persons have the right to social protection and social security systems which provide universal coverage, whether in cash or kind, contributory or non-contributory, to ensure an adequate standard of living, adequate income security, access to health care, medication and assistive devices, and access to support and care services for autonomous and independent living in older age.²

Adequacy

Older persons have the right to social protection and social security measures, whether in cash or kind, that are of a high enough value, quantity and quality, and for the full period of life, for an adequate standard of living and so that they can live autonomous, independent lives with dignity and can fully participate in society.³

Accessibility

Older persons have the right to affordable social protection social security measures, with any contributions stipulated in advance and any direct or indirect costs being affordable for all.⁴

Older persons have the right to information on all aspects of social protection and social security schemes, including eligibility and qualification.⁵

¹ See UDHR Art.22; ICESCR Art.9; CEDAW Art.11; CRPD Art.28; ICHROP Art.17

² See CESCR General Comment No.19, 2008, paragraphs 2 and 23

³ See CRPD Art.28.1; Protocol to ACHRP Art.7; CESCR General Comment No.19, 2008, paragraph 22

⁴ See CESCR General Comment No.19, 2008, paragraph 25

⁵ See ICCPR Art.19.2; CESCR General Comment No.19, 2008, paragraph 26

Older persons have the right to social protection and social security measures provided in a timely manner which are accessible in whatever setting they live.⁶

Non-discrimination

Older persons have the right to social protection and social security measures without discrimination on the ground of sex, gender or any other grounds.⁷

Older persons with disabilities have the right to social protection and social security measures on an equal basis with others without discrimination on the basis of their age, disability or any other ground.⁸

Older persons who have been forcibly displaced, older refugees and asylum seekers have the right to access social protection and social security measures available to the general population.

Older persons with migration histories have the right to the recognition of their social security contributions and pension entitlements.⁹

Participation

Older persons have the right to participate in the decision-making processes regarding the shape and content of social protection and social security measures for older persons.¹⁰

Older persons have the right to participate in the management and administration of social protection and social security measures for older persons.¹¹

Acceptability

Older persons have the right to cash and in-kind social protection and social security, including support and care services, that is appropriate and acceptable for their needs and preferences.

Remedies and redress

Older persons have the right to make complaints, appeal and seek redress for practices that deny their right to social protection and social security.¹²

⁶ See CESCR General Comment No.19, 2008, paragraph 27

⁷ See CEDAW Art.11

⁸ See CRPD Art. 28

⁹ See ICHROP Art.17; ICMW Art.27

¹⁰ See CESCR General Comment No.19, 2008, paragraph 26

¹¹ See CESCR General Comment No.19, 2008, paragraph 26

¹² See ICCPR Art.2.3

Question 3: State Obligations

States Parties shall take effective and appropriate measures

Autonomy

To ensure older persons' autonomous use of social protection and social security measures.

Availability

To ensure social protection and social security schemes are sustainable, universally available and in place to ensure older persons are provided with social protection and social security for the relevant risks and contingencies they face, including in relation to care and support.

Adequacy

To ensure social protection and social security measures, whether in cash or kind, are of a high enough value, quantity and quality, and for the full period of life, for an adequate standard of living and so that older persons can live autonomous, independent lives with dignity and can fully participate in society.

Accessibility

To ensure older persons have access to support in application processes for social protection and social security measures without delay, including older persons without identity documentation.

To ensure delivery mechanisms for social protection and social security measures are adapted so they are accessible and affordable for all older persons without discrimination.

To ensure older persons have access to information on all aspects of social protection and social security schemes, including eligibility and qualification.

Non-discrimination

To ensure the elimination of any discrimination or bias in the design, delivery and level of entitlements in social security and social protection measures.

To facilitate through bilateral treaties and other mechanisms, the recognition of social security contributions and pension entitlements for older persons with migration histories.

To ensure older persons who have been forcibly displaced, older refugees and older asylum seekers access to social protection and social security measures available to the general population.

Participation

To ensure older persons can participate in the decision-making processes regarding the shape and content of social protection and social security measures for older persons, their management and administration.

Acceptability

To ensure cash and in-kind social protection and social security, including support and care services, is appropriate and acceptable for the needs and preferences of older persons.

Remedies and redress

To ensure older persons have access to effective complaint and appeal mechanisms to seek redress for practices that deny their right to social protection and social security.

Question 5: Non-state parties

Under their duty to protect, States have an obligation to ensure that all non-state parties involved in the provision of social protection and social security for older persons comply with the standards above.¹³

¹³ See CESCR General Comment No.19, 2008, paragraph 5

Annex: Provisions in existing international human rights law and other sources

International human rights law

Universal Declaration of Human Rights, 1948

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

International Covenant on Economic, Social and Cultural Rights, 1966

Article 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

International Covenant on Civil and Political Rights, 1996

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular...

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Convention on the Rights of Persons with Disabilities, 2006

Article 28 Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

- (d) To ensure access by persons with disabilities to public housing programmes;
- (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Advisory documents

The Committee on Economic, Social and Cultural Rights General Comment 19 on the right to social security (2008) provides guidance on the elements of the right to social security and measures States parties should take to meet their obligations.¹⁴ It also covers the right's core elements of availability, including in old age; adequacy of benefits in amount and duration; accessibility, including coverage, eligibility, affordability, participation, information and physical access; and non-discrimination and equality including gender equality. It states that non-contributory pensions are required to ensure universal protection of the right. This builds on the earlier Committee on Economic, Social and Cultural Rights General Comment No. 6 on the economic, social and cultural rights of older persons (1996) in which the Committee says that providing non-contributory old age-benefits or other assistance for those without access to other pensions or resources is necessary to fulfil Article 9 of the ICESCR.¹⁵

2. The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.

5. Other forms of social security are also acceptable, including (a) privately run schemes, and (b) self-help or other measures, such as community-based or mutual schemes. Whichever system is chosen, it must conform to the essential elements of the right to social security and to that extent should be viewed as contributing to the right to social security and be protected by States parties in accordance with this general comment.

11. The right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system. The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations.

22. Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to

¹⁴ E/C.12/GC/19, CESCR, 2008

¹⁵ *General Comment No. 6 on the economic, social and cultural rights of older persons*, CESCR, 2006, paragraph 30

avoid any adverse effect on the levels of benefits and the form in which they are provided. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. When a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.

4. Accessibility

(a) Coverage

23. All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited under article 2, paragraph 2, of the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary.

(b) Eligibility

24. Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.

(c) Affordability

25. If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights.

(d) Participation and information

26. Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

(e) Physical access

27. Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict, so that they, too, can have access to these services.

The Committee on the Elimination of Discrimination Against Women's General Recommendation No. 27 (2010) addresses gender equality in social security and recommends that State parties ensure that retirement ages do not discriminate against women and that pension policies are not discriminatory in any way.¹⁶

¹⁶ CEDAW/GC/27, CEDAW, 2010, paragraph 42

The Independent Expert on the enjoyment of all human rights by older persons recommended that states should ensure that the right social security is enshrined in domestic legislation, that schemes should be designed in line with human rights standards and that austerity and fiscal consolidation programmes should be revised to ensure the provision of basic income to older persons.¹⁷

Regional human rights law on the rights of older persons

Inter-American Convention on Protecting the Human Rights of Older Persons, 2015

Article 17: Right to social security

All older persons have the right to social security to protect them so that they can live in dignity.

State Parties shall progressively promote, within available resources, the provision of income to ensure a dignified life for older persons through social security systems and other flexible social protection mechanisms.

States Parties shall seek to facilitate, through institutional agreements, bilateral treaties, and other hemispheric mechanisms, the recognition of benefits, social security contributions, and pension entitlements for migrant older persons.

Everything in this article will be in accordance with national legislation.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, 2016

Article 7: Social Protection

States Parties shall:

1. Develop policies and legislation that ensure that Older persons who retire from their employment are provided with adequate pensions and other forms of social security;
2. Ensure that universal social protection mechanisms exist to provide income security for those Older persons who did not have the opportunity to contribute to any social security provisions;
3. Ensure that the processes and procedures of accessing pensions are decentralised, simple and dignified;
4. Take legislative and other measures to enable individuals to prepare for income security in old age; and
5. Take legislative and other measures that facilitate the rights of Older Persons to access services from state service providers.

Advisory documents

Council of Europe recommendation CM/Rec(2014)2

V. Social protection and employment

¹⁷ A/HRC/30/43, *Report of the Independent Expert on the enjoyment of all human rights by older persons*, Rosa Kornfeld-Matte, 2015, paragraphs 102 – 105

21. Older persons should receive appropriate resources enabling them to have an adequate standard of living and participate in public, economic, social and cultural life.
22. Member States should take measures to facilitate mobility of older persons and proper access to infrastructure for them.
23. Member States should provide adequate measures of support to enable older persons to have housing adapted to their current and future needs.
24. Member States should promote, either by public institutions or in co-operation with non-governmental organisations or with the private sector, sufficient supplementary services such as adult day care, nursing care or preparation of meals.
25. Member States which have not yet ratified the European Social Charter (revised) and the Additional Protocol to the European Social Charter providing for a system of collective complaints (ETS No. 158) are invited to consider doing so. Those which have already ratified the revised Charter, but are not yet bound by Article 23 (The right to social protection of older persons), are invited to consider declaring that they consider themselves to be bound by that provision.
26. Member States should ensure that older persons do not face discrimination in employment, including on grounds of age, in both the public and private sectors. This should include aspects such as conditions for access to employment (including recruitment conditions), vocational initial and continuous training, working conditions (including dismissal and remuneration), membership in trade unions or retirement. Member States should ensure that any difference in treatment is justified by furthering a legitimate aim of employment policy and by being proportionate to achieve that aim.
27. Member States should include the promotion of participation of older persons in the labour market in their employment policies.
28. Member States should pay specific attention to safety and health problems of older workers in their respective programmes, action plans and other relevant policy action.