

Responses of National Human Rights Commission of Mongolia to the Open-Ended Working Group on Ageing

EDUCATION, TRAINING, LIFE-LONG LEARNING AND CAPACITY BUILDING

Definition

Q1. According to the part 14.3 of Article 14 of the *Law on Older Persons*, the central state administrative body in charge of education is obliged to develop and implement policy, project and training program aimed at involving older persons in life-long learning; to enhance their knowledge and education based on their needs and interests; to provide opportunities for older persons to learn and develop new skills; to use information and communication technologies; and to oversee the implementation of relevant laws and the Government decisions.

Scope of the right

Q2. Under the Article 7 of the *Law on Older Persons*, the following types of services shall be provided to the older persons:

- Reference and information services;
- Counselling service;
- Open-door mobile service;
- Day care service;
- Voluntary service;
- Day care treatment and nursing service;
- Nursing service;
- Food service provision;
- Protection service from domestic violence.

According to the part 7.2.1 of Article of *Law on Older Persons*, provincial and district social welfare departments, social workers in sub-administrative divisions as well as older persons' organizations shall provide any assistance, support and services to older citizens, their family members and care-takers and deliver them information related to the protection of the rights of older citizens in oral, written or online forms and to organize a training for them.

Part 6.8 of Article 6 of the law states, "An older citizen has a right to self-development and this right can be exercised through the involvement of any training and opportunities to develop capacities by him/her. This provision is crucial in guaranteeing the right to education by older persons.

State obligations

Q3. -

Special considerations

Q4. -

Q5. Under the *Law on Older Persons*, the older persons' organization was determined and assigned to execute some of the state functions. Within this framework, the Mongolian Seniors' Association carries out the following various activities aimed at older persons. For example,

- To raise levels of awareness and understanding about their legal education
- To provide them with relevant guidelines and advice to support their employment
- To organize a training on legal frameworks related to the older persons.

Implementation

Q6. In 2017, the Mongolian Seniors Association including their branch in all provinces and districts conducted a training for older persons in order to implement and promote the *Law on Older Persons* and to improve consulting services by older professionals. The training has the following four modules: module i) on the law on older persons, module ii) on the law on social insurance; module iii) on law on social welfare and module iv) on law on employment and law to combat domestic violence. The training involved more than 800 older citizens from all provincial, soum, district seniors' association and provided them with certificate of 'training of trainer'.

In addition, the National Human Rights Commission of Mongolia, Center of Gerontology, Ministry of Health and Ministry of Labour and Social Protection organize a training for older persons on the occasion of the international day of older persons.

SOCIAL PROTECTION AND SOCIAL SECURITY

Definition

Q1. Part 16.5 of Article 16 of the *Constitution of Mongolia* states, "the right to material and financial assistance in old age, disability, childbirth, and childcare and in other cases as provided by law".

In compliance with the *Constitution of Mongolia*, *Law on Pensions and Benefits provided by the Social Insurance Fund*, *Law on Social Welfare*, *Law on Pensions and Benefits for Military Servicemen* and relevant orders and decisions provide that women aged 55 and men aged 60 become eligible to receive a pension benefits.

Part 16.6 of Article 16 of the *Constitution of Mongolia* guarantees "the right to the protection of health and medical care. The procedure and conditions of free medical aid are determined by law". In line with this provision, older persons are exempted from hospital admission fee under the *Law on Health Insurance* and its relevant resolutions and procedures.

Scope of the right

Q2.

a) *The Law on Pensions and Benefits provided by the Social Insurance Fund* sets out the minimum monthly pension of pensioner.

b) *The Law on Social Welfare* sets out the benefits and nursing services provided for older persons.

The Government of Mongolia just adopted a “National Program for Development and Protection for Older Persons” during its session held on 30 October 2019. Under the framework of this program, the Government will implement 56 activities of 13 targets of four objectives to enhance the livelihood of older persons, protect them from devastating effects of the poverty, support their health and healthy ageing, maintain their capabilities and to improve their living condition and environment.

In addition, the Government has developed a “Retirement Program for Older Persons” in line with the Law on Older Persons and the program is under the process of adoption. The aim of the program is to prepare those older persons who are nearing the date of retirement for life-cycle transitions.

c) -

d) According to the amendment into the *Law on Pensions and Benefits provided by the Social Insurance Fund*, insured person who have worked in arduous working conditions and herder who have paid contributions of pension insurance are eligible for a retirement pension 5 years before the required retirement age.

The Part 4.2 of Article 4 of the law also stipulates, “women, who have paid contributions of pension insurance for not less than 20 years and raised 4 or more born and adopted children under 3 years old until the age of 6, having attained 50 years old shall be eligible for a retirement pension at their own request”.

e) Non-government organizations are eligible in participating in administration of social welfare system. For example, under the *Law on Social Welfare*, individuals, entities or non-government organizations are eligible to provide community-based social welfare services, nursing services based on contracts with the state. In this regard, mostly non-government organizations for older persons are executing those community-based social welfare services for older persons.

State obligations

Q3.

Special considerations

Q4. -

Q5. -

Implementation

Q6. The best practice in the adoption and implementation of the normative framework on social security and social protection for older persons in Mongolia is the concept of *Law on Older Persons* adopted by the Parliament of Mongolia in 2017. The concept views experience, knowledge and skills of older persons as social assets and aims to ensure their active participation in society.

The purpose of this revised law is to maintain and support livelihood, development and participation of older persons and to enhance their opportunities to access to social services. For this purpose, new types of services for older persons are introduced including reference and information, counselling services, training and development program, open door mobile service, tailored assistance, and information delivery service in forms of oral, written or online.

In addition, this law ensures that measures aimed at improving health of older persons and supporting their employment are in line with other laws and do not create an additional budget burden for the state as those measures can be implemented from the relevant funds.

RIGHT TO WORK AND ACCESS TO THE LABOUR MARKET

National Legal and Policy Framework

Q1. The right to work by older persons is guaranteed in domestic laws of Mongolia.

For example, section 112 of the *Labour Code* states

112.1 An older person who receives a pension can perform labour.

112.2 Receipt of a pension by an older person shall not be the grounds for limiting his salary.

112.3 Upon the request of an older person, an employer may reduce his working hours or transfer such person to work not harmful to his health.

In 2017, the Parliament of Mongolia passed the revised the *Law on Older Persons* and *Law on State-funded Benefits and Support for Decorated Older Persons* and the article 9 of the *Law on Older Persons* includes eight provisions related to the support for employment by older persons.

Draft revised Labour Code has included a specific one chapter on employment by older persons. Currently the Parliament has been considering this draft law.

Q2. Older persons face following challenges for the realization of their right to work and access to the labour market in Mongolia:

- Any entities and companies express their disinterest in hiring older persons by indicating a specific age group and gender in their job advertisements.

- Any entities and companies which hired older persons calculate their older employee's annual entitlements as same as employee who is new to a labour market. According to the *Labour Code*, in addition to the annual entitlement, employees shall be awarded additional leave days taking into account the length of their record of service and their working conditions in accordance with the collective contract.

- Older employees are paid below-average salaries compared to other employees doing the same job duties in context of new labour market.

- In some cases, companies or entities do not pay social insurance fee for older employees.

Q3. According to the National Statistics Office of Mongolia, the older persons make up 6.8 percent of the national population with 223,000 people over the age of 60. Of which, 41 percent of them are male while 59 percent of them are female. Most of them or 68 percent of older persons live in Ulaanbaatar or centers of provinces, while 32 percent live in remote rural areas. In addition, 71 percent of total older persons in Mongolia have loans on their pensions.

According to the Mongolian Seniors' Association, 45,648 older persons are on employment and of which 26,186 older persons are working for animal husbandry sector.

Availability, Accessibility, Acceptability and Quality

Q4. The Ministry of Population Development and Social Protection and the Ministry of Labour jointly established a National network for, registration and information database of Mongolian older professionals and adopted¹ a program for hiring older professionals in consulting services and contracting with them on an ad-hoc basis from 2014-2016. This program provided opportunities for elders to access to labour market.

In 2017, the Government of Mongolia adopted the following procedures by its resolution No.197:

- Procedure on providing benefits and services for older citizens;
- Procedure on establishing and operationalizing a fund for older citizens;
- Procedure on providing a free of charge public transportation for older citizens and persons with disabilities;
- Procedure on administering and using registration and database of employment by older citizens; and
- Procedure on providing assistance and benefits to persons with disabilities.

The procedure on administering and using registration and database of employment by older citizens regulates establishment, administration and use of database of older persons who wish to access to labour market in line with article 9 of the *Law on Older Persons*.

¹Adopted by the joint-resolution No.A/901/201 dated 28 August 2014 of Minister of Population Development and Social Protection and Minister of Labour

In 2019, the Government of Mongolia has defined the following measures to strengthen the enforcement of the *Law on Older Persons* by its resolution No.221:

- To develop a policy on older citizens and consider it during the Cabinet session;
- To finish the construction and infrastructure of Gerontology center by 2020 and operationalize the center;
- To involve those older persons without accommodation in rental apartment program and create opportunities for them to purchase apartment with soft terms;
- To collaborate with national council of public broadcasting radios and televisions to raise public awareness about the law on older persons, increase youth assistance and support toward older persons and to learn from them.

Q5. The Government of Mongolia has been taking steps to support employment by older persons, to improve the quality of their lives and to increase their income. For example, the National Council on Employment has adopted a “Programme to develop consultancy services by older professionals” by its resolution No.1 of the Council’s meeting dated on 27 January 2017.

Under this program, every year General Office of Labour and Welfare Service publishes a call for tender for this consultancy services among non-government organizations every year and selects official organizations of older persons that operate nationwide.

Q6. Part 9.1.2 of Article 9 of the *Law on Older Persons* can be a good practice in supporting older persons to access to labour market. This specific provision regulates that employment departments in capital, provinces, soum and districts are in charge of registration of older persons who wish to access to labour market, recommendation of jobs for registered older persons, support of a form of cooperative by older persons on employment, provision of small loans and organization of training on employment for older persons. Before adopting the revised *Law on Older Persons*, the Government has taken temporary specific measures for older persons through a program.

Q7. The provisions related to protections are guaranteed in *Labour Code* and *Law on Occupational Safety and Health* are relevant for this issue.

Equality and non-discrimination

Q8. Provision 7.2 of *Labour Code* prohibits discrimination, among others, based on age in labour relations. However, there are cases of older people facing discrimination on the grounds of their age in relation to access to labour market. Job advertisements include age as a selection criterion.

Remedies and Redress

Q9. Older persons can lodge complaints to civil court in Mongolia to seek redress for denial of their right to work and access to the labour market as same as other people. There is no special mechanism designed for older persons.

ACCESS TO JUSTICE

National legal framework

Q1. Older persons can lodge a complaint to court as same as anyone else in the country. There is no special mechanism designed for older persons. Besides the judicial system, older persons also can lodge a complaint to the National Human Rights Commission of Mongolia.

Additionally, the *Law on Resolution of Petitions and Complaints Made by Citizens to the State Agencies and Public Officials*, any public organization shall receive and resolve the complaints lodged by citizens including older persons.

Availability

Q2. The Mongolian court system had a long-term experience in reaching out people living in remote rural places in the country through its mobile court. Since its transition to democracy and free-market economy, the Government has paid attention to accessibility and quality of mobile court and started to provide a comprehensive services to those people living in remote areas by providing services of first instance dispute settlement, mediation and legal advices.

In terms of legal framework:

The State Security Council adopted a “Program for strengthening the judicial reform” through its meeting dated on 15 April 2010. Section 2.1.2 of Part 2 of the Program mentioned a need to ensure accessibility of first instance court proceedings, to provide means of transportation (carting) and or appropriate vehicle and to run the mobile court.

The Law on Court of Mongolia regulates relations concerning the legal basis for judicial system, organization, powers and operation, and establishing the guarantees for exercising the judicial power. In order to ensure independence of the judiciary, this law focuses on complex of organizational/administrative guarantees, among others, including permanent and mobile workplace and courtroom; and states that first instance court can be running as a mobile court to reach out public (please refer to part 29.3 of article 29 and part 22.6 of article 22 of the law in relation to mobile court).

Accessibility

Q3. In terms of accessibility of justice system in Mongolia, courts of first instances are located in accordance with administrative divisions, by means located mostly in centres of provinces and near to the public transportation stops. In order to improve the accessibility of all justice systems for older persons with disabilities and other able-bodied people, all courts have started to use online court records in addition to running of the mobile courts. Additionally, all courts in Ulaanbaatar and newly built court buildings in other provinces follow the physical accessible standards.

However, it is required to take into account of organizing a proper training for court officers and staff to ensure the rights of older persons with disabilities, developing necessary guidelines, training court staff in effectively communicating with older persons with disabilities, enhancing physical accessibility and providing all courts with wheelchairs.

Q4. Part 7.2.2 of Article 7.2 of the *Law on Older Persons* states, “social, economic, psychological, legal counselling and advocate services shall be provided to older persons”. The mobile courts regularly provide legal advices to older persons in relation to settlement of their retirement pension.

Q5. Older persons with disabilities face more challenges in accessing justice and court proceedings due to the lack of information accessibility and their specific disability such as their hearing and visual impairments as well as their illiteracy in some cases.

Q6. -

Equality and non-discrimination

Q7. *The Constitution of Mongolia* and other domestic laws prohibit a discrimination grounds on age and disability.

According to the code of ethics of Mongolian Judges (2014), discrimination against parties or defendants by judge is prohibited. In addition, a code of ethics of court administrative staff also prohibits discrimination. In spite of prohibition of discrimination within legal framework, the discrimination takes place within the court proceedings, especially in the case of older person with disabilities are being defendant. Mainly due to the lack of information and physical accessibility and their disabilities such as hearing and visual impairments or illiteracy in some cases. Although there is no case related to the discrimination against older persons with disabilities recorded, it does not mean that their rights are not violated.

People with disabilities have limited capacities to express their opinion freely during a trial and to meet with court officials.

Q8. -

Accountability

Q9. If there is a case of discrimination against anyone including older persons committed by justice system including judges, the case will be considered by the Judicial Ethics Committee. According to the *Criminal Code*, any discrimination is a crime.