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# HelpAge Deutschland

## **Submission on the Normative Content of Social Protection and Social Security (including Social Protection Floors)**

11<sup>th</sup> working session of the Open-Ended Working Group on Ageing, 2020

HelpAge Deutschland aligns with the submission by HelpAge International. The submission by HelpAge Deutschland is designed to complement the submission by HelpAge International, informed by a major study on global social protection (see below).

### **Evidence base of this submission**

The submission is informed by the findings of the research project FLOOR, which investigated

- the spread of entitlements to social cash transfers in all countries of the global South (Leisering 2019; for more see [www.floorcash.org](http://www.floorcash.org))
- the interpretation of social human rights by states since 1976 as reflected in the States Party Reports under the monitoring mechanism of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Davy 2013, 2014)
- the negotiations among UN member states in the process of drafting the Universal Declaration of Human Rights (UDHR) (Davy 2013, 2014, 2015)
- the changes in the views on social protection of all major international organizations (von Gliszczynski 2015, von Gliszczynski/Leisering 2016, Leisering 2019).

FLOOR included an analysis of all social pensions in all countries of the global South (Böger/Leisering 2017, 2019, Leisering 2019). See the list of references at the end of the submission.

## Why new normative elements are needed

New normative elements are needed; first, because extant human rights instruments have gaps or are under-specified regarding social security, not only in view of older persons; and second, because major changes have taken place in old-age security since the UDHR and the ICESCR were passed in 1948 and 1966 respectively—changes that are not reflected in these and other human rights documents.

First, extant human rights instruments have significant gaps or are under-specified in important respects. This applies in particular to Articles 9 to 12 of the ICESCR, but also to other, more specific human rights instruments that largely use the same wordings. Article 9 ICESCR on social security is the shortest article in the Covenant; it defines no standard and names only one instrument. The reason is that during the negotiations for the UDHR in 1946-1948, social security was left to the International Labour Organization (ILO), because social security was considered the remit of the ILO. Article 9 is much less specified and less concrete than Article 11 on health.

Article 11 on living standards is vague, positing only "adequate" standards. The reason is that during the negotiations in 1946-1948, a consensus on standards could not be reached, not even a consensus on securing a minimum. In fact, present-day documents by major international organisations tend to focus on extending coverage, while largely remaining vague or silent on the level of benefits, let alone defining a benefit standard.

Furthermore, article 11 does not specify any agency in charge of securing an adequate standard of living. This allows for a developmental interpretation, which relies on raising living standards through economic growth rather than bestowing individual entitlements to social security on all citizens. In the States Party Reports under the monitoring mechanism of the ICESCR, developmental interpretations in fact dominated well into the 1990s. Article 11 on health specifies no agency either.

Second, major changes have taken place in old-age security since 1948 and 1966. The first change is the massive spread of social cash transfers in the global South since the late 1990s—a "development revolution from the global South" (Hanlon et al. 2010), which for the first time bestowed social rights on millions of poor persons, including older persons. The idea of "just giving money to the poor" was remote in 1948 and 1966 (even though the ILO had always mentioned social assistance besides social insurance, most explicitly in Recommendation 67 of 1944, the Income Security Recommendation). The Madrid International Plan of Action on Ageing (MIPAA, 2002) is dated in this respect too. "Social" (non-contributory) pensions, which are variety of social cash transfers, began to mushroom in the global South precisely in the early 2000s, but this new instrument against poverty in old age was not yet reflected in the MIPAA. Another change is the worldwide rise of private provision for old age, and of occupational pension plans. Push factors included the global campaign by the World Bank to spread private

pensions, in conjunction with the globalization of financial markets ("financialization"). A crucial pull factor has been the rise of the middle classes in Southern countries who tend to take up private provisions. The third, most fundamental change relates to the global North. Before World War II, issues of labour rights and working conditions were at the centre of national social policies in the North. Only after World War II did social security move to centre stage of the then emerging "welfare states".

Accordingly, the proposed new normative elements refer, among others, to three aspects:

- Benefit standards
- Social cash transfers/social assistance. "Non-contributory schemes ... or targeted social assistance schemes" are required by the General Comment no. 19 on Article 9 ICESCR<sup>1</sup>, including for older persons<sup>2</sup>, but they need to be spelt out in a human rights convention, since they have become the mainstay of social security for many of the poor in the global South. But only 50% of the Southern countries have set up a social (non-contributory) pension. Moreover, 40% of the social pensions have a weak legal base, they are not based on statute. 83% the social pensions are means tested, and this raises issues of the dignity of claimants.
- Private provisions and occupational welfare. Human rights are not only geared to the poor, the middle classes also have a right to social security, and this may include private schemes. Moreover, there is social mobility. Some of the poor may move up on the social ladder and seek private provision to complement public provisions for old age.

## **Answers to the guiding questions**

### **Question 1: definition**

Older persons have the right to statute-based social protection and social security, including social insurance, non-contributory pensions, and other provisions needed for a life in dignity (healthcare, long-term care, housing, food, and others).<sup>3</sup>

Adult persons have the right to access public as well as private and occupational pension schemes to provide for his or her later life in old age.<sup>4</sup>

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<sup>1</sup> See ICESCR General Comment No.19, 2008, par. 4, 23.

<sup>2</sup> See ICESCR General Comment No.19, 2008, par. 15.

<sup>3</sup> Cf. ICESCR Art.9, 11

<sup>4</sup> See ICESCR General Comment No.19, 2008, par. 5.

## **Question 2: scope of the right**

### **Availability**

Older persons have the right to a non-contributory pension, if income from other pensions and other means is insufficient or absent.

### **Adequacy**

Older person have the right to a non-contributory pension that secures a sociocultural minimum and enables participation in society.<sup>5</sup>

### **Equity**

Older persons have the right to social protection and social security without discrimination by age, religion, gender, occupational status, place, or other ascribed characteristics.

### **Participation**

Older persons have the right to participate in the definition of a sociocultural minimum standard for non-contributory pensions.

## **Question 3: state obligations**

States Parties shall take effective and appropriate measures:

To put pension schemes on a legal, statutory base.<sup>6</sup>

To set up non-contributory pension schemes.

To set up state or para-state agencies to administer public pensions professionally and with secure budgets protected against inroads from third parties.

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<sup>5</sup> See Social Code Book (Sozialgesetzbuch), part XII (Germany). For (lower, less distinctive) standards of „adequacy“ see ICESCR Art.9, 11; CRPD, Art. 28; MIPAA, par. 50, 52. But see ILO Convention No. 102, Art. 67. For a minimum with qualifications see ICESCR General Comment No.19, 2008, par. 59. For “basic social protection” and a “sufficient minimum” (relating to income protection) see MIPAA, par. 52, 53.

<sup>6</sup> See ICESCR General Comment No.19, 2008, par. 11.

To fix qualifying ages for all pension schemes well below the average life expectancy in the country, so that older persons can enjoy a significant period of retirement.

To set up offline and online information systems that enable all older persons to ascertain their credits and claims under all public and private pension schemes.<sup>7</sup>

To set up a body of experts, which ascertains a sociocultural minimum needed for a dignified life, informed by scientific evidence and with the participation of older persons.

To set up a monitoring system, based on law, to secure and adjust on a regular basis the level of social protection benefits, including the sociocultural minimum, in the face of changing needs.

To set up digital technologies to enable access to social protection for older persons who live in remote areas.

To ensure that social services such as hospitals, older persons homes, or advice centres are spread equitably across the country, to allow equal access by all older persons wherever they live.

To ensure that for means-tested social protection schemes, including non-contributory pensions, the means test is designed in a way to respect the dignity of claimants.

To remove indirect discrimination that ensues from a regressive taxation of pension schemes that privileges selected social groups.<sup>8</sup>

#### **Question 4: Special considerations**

States Parties shall take effective and appropriate measures to ensure that private and occupational pension schemes are adequately regulated by law and regulatory agencies, to make sure that they comply with the basic rights laid down in this Convention.<sup>9</sup>

#### **Question 5: Implementation**

States Parties shall run welfare rights campaigns on a regular basis in an effective and appropriate way, to reduce non-take-up of social protection benefits, including non-contributory pensions.

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<sup>7</sup> See the weaker wording in ICESCR General Comment No.19, 2008, par. 26.

<sup>8</sup> Cf. See ICESCR General Comment No.19, 2008, par. 42.

<sup>9</sup> See MIPAA, par. 52(g). See the weaker wording in ICESCR General Comment No.19, 2008, par. 5. For indirect discrimination see ICESCR General Comment No.20, 2009, par. 10.

## References:

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