

The key elements of the normative content for the development of a possible international standard on the protection of the rights of older people to education, learning, lifelong-learning and capacity building and social protection, social security (social protection floors).

A. Introduction

This joint submission of the German Institute for Human Rights and the Commissioner for Human Rights of the Republic of Poland (both A Status NHRIs) is based on conclusions from discussions at an expert workshop held at the Office of the Commissioner for Human rights of the Republic of Poland Rights on 19 November 2019. The contribution made by some 20 experts is gratefully acknowledged.

This input is intended to advance the discussion on the content of an international instrument. Both institutions are of the firm view that a binding international instrument would provide the strongest protection for the rights of older persons.

Following discussions at the 8th, 9th and 10th sessions of the OEWG, the decision to invite relevant stakeholders to submit normative content on the thematic areas discussed is welcome. We wish to highlight the importance of referring to such principles as the dignity, autonomy and independence of older persons and non-discrimination in the preamble of the new international instrument, which should be elaborated as a binding convention on human rights of older persons. These principles should be affirmed in the preamble and in the text of the new convention, which should also identify the barriers to the full enjoyment of human rights and fundamental freedoms by older persons.

Moreover, any new instrument should satisfy the following conditions:

- a) The new instrument should not lower existing international human rights standards.
- b) A new convention needs to declare clearly that States are the duty bearers.
- c) The instrument should state that the rights holders are older persons, who constitute a heterogeneous group of persons of various capabilities and needs.
- d) The new instrument should stress the positive potential of older persons and guarantee the enjoyment of their capabilities and human rights on an equal basis.
- e) A new instrument should acknowledge the participation of older persons as experts

- f) The instrument should indicate the changing technologies which will play a role in the lives of older persons and ageing societies in the future and frame them in the context of human rights.

B. Normative elements of the right to education, life-long learning and capacity building

It shall be taken into account:

1. Gaps in legal framework:

- Lack of visibility of education in old age Art. 13 and Art. 14 of the Covenant on Economic, Social and Cultural Rights addresses education.¹ Nevertheless it focuses on primary, secondary, tertiary and vocational education. It does not indicate the education in old age, which might request different scope and methods and focus on informal and non-formal education².
- Art.24 CRPD covers the right to access for persons with disabilities to general tertiary education, vocational training, adult education and life-long learning on an equal basis with others. If there is no education offer for persons in older age then persons who acquire disability combined with ageing are not entitled to education - if others in that age don't have access to it neither. This example shows i.a. that there is a need to indicate in the new instrument that education offer for older persons shall be provided for them specifically according to their needs (just as the other types of education are prepared according to the needs and goals of younger generations).

2. Older persons express their willingness to learn:

- in order to deal with transition to old age
- to gain information needed to keep earning an income, also in order to survive
- about health
- about financial and economics
- to be able to volunteer
- around different roles they may play in family and society
- about bringing up children and youngsters
- to gain information needed for political engagement
- to keep up with new technologies – also in order to gain access to public services
- to gain skills the older persons weren't able to gain earlier (e.g. literacy)
- (last but not least) to gain the knowledge about the ways to get support, when it's needed.

¹ ICESCR Art.13, Art 14

² See The Council of European Union Recommendation on the validation of non-formal and informal learning (2012/C 398/01)

3. Ageist attitudes:

Older persons who are willing to learn face discrimination often based on the conviction that an older person is not capable to learn because of their old age. Older persons encountering such kind of approach may easily internalise it themselves. Another kind of ageism is observed in cases, when older citizens are gaining some new knowledge but they are prevented from utilizing it (e.g. at work).

Scope

Definition:

Older persons have the right to lifelong learning, education and skills-building tailored to their needs on an equal basis with others and without discrimination, so they can live autonomous and independent lives, fulfil their aspirations, build their skills and capacities, develop their full human potential and sense of dignity and self-worth, and participate fully in society.³

Non-discrimination

Older persons have the right to acquire and utilize their knowledge and skills without discrimination and on an equal basis with others.⁴

Availability

Older persons have the right to all forms of lifelong learning, education and skills-building, including but not limited to tertiary education, vocational training and retraining, digital and new technology-based education, adult education, self, non-formal, informal, recreational and community-based education, lifelong learning programs, legal literacy, and skills training in literacy, numeracy and technological competencies.⁵

Acceptability and adaptability

Older persons have the right to equal access to opportunities of lifelong learning, education and skills-building available to the general public and to learning opportunities adapted to their specific needs, including duration of study and communication needs, skills, motivations, preferences and diverse identities.⁶

Accessibility

Older persons have the right to affordable lifelong learning, education and skills-building opportunities.⁷

Older persons have the right to lifelong learning, education and skills-building opportunities in settings that are accessible to them, including in their communities and in care and support settings.⁸

³ See UDHR Art.26; ICESCR Art.13; CRPD Art.24; EU Chart on Human Rights, Art. 14

⁴ See CEDAW Art.10; CRPD Art.24; Art 30; CESCR General Comment No. 13, 1999, paragraph 6 b) i); CESCR General Comment No. 6, paragraph 36

⁵ See CESCR General Comment No. 6, 1996, paragraph 37

⁶ See ICHROP Art.20; CRPD Art. 24, paragraph 4; CESCR General Comment No. 13, 1999, paragraphs 6.c and CESCR General Comment No. 4

⁷ See CESCR General Comment No. 13, 1999, paragraph 6.b.iii

⁸ See CESCR General Comment No. 13, 1999, paragraphs 6.b.ii and d

Older persons have the right to effective information about lifelong learning, education and skills-building opportunities and how to access them.⁹

Participation

Older persons have the right to participate in the decision-making processes regarding the shape and content of life-long learning, educational and skills-building programs aimed at older adults.¹⁰

Older persons have the right to participate as teachers and sources of knowledge in life-long learning, educational and skills-building programs for all generations.¹¹

Remedies and redress

Older persons have the right to accountability mechanisms that provide for remedies and redress when their rights are violated.¹²

States Obligation

State Parties have the obligation to ensure that older persons have equal access to opportunities for all forms lifelong learning, skills-building and levels of education without discrimination based on age or any other grounds.

This includes that older persons must have the same opportunities as others to benefit from scholarships and other educational or study grants.

State Parties have the obligation to fulfil a systems and mechanisms that all older persons are able to acquire and utilize their knowledge and skills.

State Parties have the obligation to fulfil including reasonable accommodation of an individual's requirements is provided.

State Parties have an obligation to eliminate negative ageist stereotypes and prejudices about older persons' ability and willingness to learn, and the value and importance of learning, education and skills building in older age.

State Parties have an obligation to introduce special measures to raise awareness among older persons about their right to life-long learning, education and skills building and obligation to encourage older persons to take advantage of it.

States Parties have the duty to respect, ensure and fulfill that all forms of lifelong learning, education and skills-building are available to older persons

States Parties have the duty to ensure and fulfill that all older persons have access to lifelong learning, education and skills-building opportunities, which are adapted to their specific needs, skills, motivations, preferences and diverse identities.

⁹ See ICCPR Art.19.2

¹⁰ See ICHROP Art.20.f

¹¹ See ICHROP Art.20

¹² See ICCPR Art.2.3

To fulfill this obligation, sufficient funds need to be allocated for lifelong learning, education and skills-building opportunities for older persons.

States Parties have the obligation to respect, ensure and fulfill that all older persons have access to lifelong learning, education and skills-building opportunities tailored to their needs.

This includes access to affordable lifelong learning, education and skills-building opportunities

and the access to lifelong learning, education and skills-building opportunities in the settings in which they choose to live, including in their communities and in care and support settings.

States Parties have the duty to respect, ensure and fulfill that all Older persons have access to information about lifelong learning, education and skills-building opportunities and how to access them.

States Parties have the duty to respect, ensure and fulfill that all older persons have opportunities to participate in the decision-making processes regarding the shape and content of learning, educational and skills-building programs aimed at older adults.

States Parties have the duty to ensure and fulfill that safeguards are put in place to protect violation of the right to lifelong learning, education and skills-building, including breaches of privacy and security of data on digital, online and new technology-based learning platforms.

C. Normative elements of social security and social protection (including social protection floors)

We focus in this input on social security, because we came to the conclusion, that social security is more specific than social protection. Social security for older persons should be framed as a right. Social security implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.¹³

1. The right to social security for older persons includes several aspects and additionally societies have undergone fundamental changes since the Universal Declaration on Human Rights and the Covenant on Economic, Social and Cultural Rights have been negotiated, such as:

- demographic change
- change of family structure
- change of the labor market
- growing diversity among older persons
- mobility during the live course – which shall involve extraterritorial obligations for states

¹³ See CESCR General Comment No. 6, 1995, para.. 26

- contributory and non-contributory systems
 - realisation of the right
2. Access to work is a necessity for the contributory system and access to health care, long-term care, palliative care belong to the crucial aspects of social security – therefore the right to social security shall be combined with other human rights.¹⁴

Scope

Non-discrimination

Older persons have the right to social security without discrimination and on an equal basis with others.¹⁵

Individual aspects include:

- access to information
- self determination
- to have the right without any discrimination on age or other grounds
- to decide how to use their income and in kind entitlements to social security schemes
- supported decision-making where necessary
- support and assistance
- to get the social security measures in a timely manner
- access to social security in the setting an older person live, in all kind of settings
- respect for one's will and preferences
- adequate standard of living
- to choose one's own lifestyle
- equal recognition before the law

Societal aspects include

- affordable social security measures
- age-sensitive and age-friendly communities and environments
- the need to address intersection with right to work including such aspects like care work, long-term unemployment and working beyond retirement age
- full participation in society
- support for the older person to participate in the social security system
- enabling older persons to decide or act on their own will and preferences

Economic and financial aspects include

- the ability to generate and receive enough income for an adequate standard of living

¹⁴ See CESCR, General Comment No 19, 2009, para. 28

¹⁵ See CESCR, General Comment No 19, 2009, para. 29-31

- freedom of will and preferences how to deal with the social security
- need for social security to cover areas beyond pension
- adequate social benefits
- freedom to spend one's money as one chooses
- access to and the right to choose types of support
- access to social security, health care, long term care and palliative care

Remedies and redress

- Older persons have the right to accountability mechanisms that provide for remedies and redress when their rights are violated.

Procedural aspects include

- recognition as a rights holder
- support for assistance if required
- the development and implementation of effective safeguards that ensure the autonomy of older persons to ensure respect for their rights, will and preferences and the avoidance of undue interference how to deal with their income in old age
- the existence of an accessible and effective complaint mechanism if the right to social security of an older person is not respected
- the development of effective safeguards in times of financial crises

States obligations:

States Parties have the obligation to fulfil, protect and ensure the right to social security. In accordance with article 9 of the Covenant the provisions of the ILO social security conventions, states parties must take appropriate measures to establish general regimes of compulsory old age insurance. States parties shall establish a flexible retirement age, depending on occupations performances and working abilities, bearing in mind social and economic factors.¹⁶

States shall take appropriate and effective measures

- to ensure effective access to timely information on available support and services
- to ensure the enjoyment of the right without discrimination
- to ensure effective measures to assess and monitor the enjoyment of the right in practice.
- to ensure that social security guarantees an adequate standard of living this is a necessity for a dignified live
- State parties should provide non-contributory old age benefits and other assistances, on available resources for older persons who are not entitled or have not contributed enough to get an old age pension¹⁷
- to ensure that social security is guaranteed with the principle that the will and preferences of the person have to be respected.

¹⁶ CESCR General Comment No. 6, 1995, para. 27, 28

¹⁷ CESCR General Comment No. 6, 1995, para 30