

Guiding questions for Defining the Normative Content of the Issues Examined at the 10th Working Session of the Open-ended Working Group: Special Protection and Social Security (including social protection floors)

Definition

1. What is the definition of the right to social security and social protection (including social protection floors) for older persons in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

There is no specific law that define the right to social protection and security for older persons in Malaysia. Mandatory retirement age for the public sector and minimum wage for the private sector is 60 years old under the Minimum Retirement Age Act 2012. Minimum Wage Order 2012 prescribes the minimum wage for private sector employees regardless of their age.

Upon retirement, older persons' livelihoods may be supported through pensions under the Pensions Act 1980 for pensionable public servants; the Employees Provident Fund (EPF) Act 1991 for private sector employees and non-pensionable public servants; and through other private retirement schemes (PRS) governed by Capital Services and Market Act 2007. If they are in active employment, qualified older workers may be entitled to compensation under contingent circumstances through the Workman's Compensation Act 1952 or under the Employees Social Security Act 1969 (SOCSSO).

In addition to these legislated schemes, there are social assistance measures including those that give cash handouts and financial assistance particularly for older persons from lower income groups. However, these assistances are often one-off, inconsistent, difficult to access and even political. Therefore, the right to social security and social protection for older persons in Malaysia, as well as its protection mechanisms, should be clearly and comprehensively defined under national law to include not just social insurance and labour market programs but also social assistance.

Scope of the right

2. What are the key normative elements of the right to social protection and social security for older persons? Please provide references to existing standards on such elements as below, as well as any additional elements:
 - a) Availability of contributory and non-contributory schemes for older persons
Private employers and employees up to age 75 years old within the meaning of the EPF Act must contribute to the EPF until the employee's retirement or cessation of employment. This means that the EPF contributory scheme do not cover employees above 75 years old but may make full withdrawal from their accounts from the age

of 60 years old. Employees contribute 11% of their monthly salary while employers contribute 12% for each employee earning more than MYR 5,000.00 and 13% for each employee earning MYR 5,000.00 and below. Meanwhile, pensionable public servants need not contribute to their pension scheme but would be entitled to pensions from the Government's consolidated fund upon the compulsory retirement age of 60 years or optional retirement age of 55 or 58 years, subject to the terms under the Pensions Act.

b) Adequacy of benefits to guarantee older person's access to an adequate standard of living and adequate access to health care

Policy measures under the National Health Policy for Older Persons 2008 and Action Plan for the Healthcare of Older Persons 2010-2020 are aimed at ensuring older persons achieve optimal health through a more integrated and comprehensive health and health-related services. Under this Policy and Action Plan, this objective is targeted to be achieved through seven strategies including legislation; health promotion; provision of comprehensive healthcare services; interagency and multi-stakeholder collaboration; and information systems. Under Budget 2020, the Government has pledged to spend some MYR 80 million to upgrade, repair and maintain 67 welfare centers including for the elderly, and MYR 4.6 million for the 129 senior citizens activity centers across the country.

c) Accessibility, including older person's coverage by social security systems, eligibility criteria, and affordability of contributions

Employees aged 60 and above is covered through the Employment Injury Scheme under the SOCSO Act. Through this scheme, the employer's contribution rate is 1.25% of the employee's monthly salary and payable based on the contribution schedule.

d) Equitable access by older persons to the enjoyment of the right to social security and social protection, paying special attention to groups in vulnerable situation

Individuals aged 18 years and above falling outside the scope of the EPF may contribute to their own retirement savings through the PRS and make withdrawals when they reach the age of 55 years. The Government recently expanded EPF to include a voluntary contribution scheme for the self-employed, retired and non-earning individuals with a minimum guaranteed dividend of 2.5%. Without this scheme, individuals particularly in the informal sector and gig economy may be left out. Under Budget 2020, the Government has committed MYR 575 million to provide socio-economic assistance for 137,000 senior citizens living below the poverty line next year. In addition, older persons from vulnerable groups e.g. among the Orang Asli indigenous community may also benefit from similar special assistance allocated for that vulnerable group.

e) Participation of older persons in the design and administration of the social security system

State obligations

3. What are the measures that should be undertaken by the State to respect, protect, fulfill the right of social security and social protection for older persons, regarding the normative elements as provided above?

The State should consider reviewing the minimum retirement age including to increase the retirement age and to give persons above the retirement age more opportunity and flexibility to continue to work to support their livelihood. The law(s) specially to protect older persons against human rights abuses such as discrimination, violence and neglect, and to systemise social protection for older persons should also be formulated and come into force soon as Malaysia is expected to become an aging society as early as 2030.

Special considerations

4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to social protection and social security?

Current protection gaps in special measures relating to older persons, older women and their social protection and social security.

5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right of older persons to social protection and social security?

The private sector should be more open to employing older persons in view of their rich experience and knowledge which could contribute to the work of the organisations. The private sector could play a role in providing more work opportunities for older persons so as to allow them to have access to income security and social protection.

Implementation

6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on social security and social protection for older persons?

A good practice is Malaysia's consistent national policy on older persons. However, challenges remain in terms of implementing rights-based and holistic approaches to the formulation and execution of such policies, and in the respect, protection and fulfillment of human rights of older persons.