

International Labour Organization

ILO contribution in preparation to the 11th session of the Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons, New York, 6-9 April 2020

GUIDING QUESTIONS FOR THE FOCUS AREAS OF THE X SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING:

Social 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?***

The ILO, being a standard-setting agency, has adopted a normative framework in the field of social security since its creation that consists of no fewer than 31 Conventions and 23 Recommendations, which have guided the development of social security worldwide. Numerous of these Conventions and Recommendations are relevant to the right to social security and social protection of older persons. Like other international labour standards, they are primarily tools for governments, which - in consultation with employers and workers - as well as representatives of other persons concerned, seek to draft and implement laws and policies for the establishment and development of social security systems, schemes and benefits. While Recommendations contain non-binding guidelines, Conventions, where ratified, create binding obligations for member States, which have to ensure their application, in law and practice.

The ILO's normative framework also provides concrete guidance for the realisation of the human right of older persons to social security and an adequate standard of living in order to support their health and well-being, including medical care and necessary social services, as laid down in the major international human rights instruments, i.e. The Universal Declaration of Human Rights (UDHR), 1948, and, in more general terms, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, as well as other international human rights instruments.

The ILO's Social Security (Minimum Standards) Convention, 1952 (No. 102), the Old-Age, Invalidity and Survivors' Benefits Convention, 1967 (No. 128), and its accompanying Recommendation No. 131, the Medical Care Sickness Benefits Convention, 1969 (No. 130) and its accompanying Recommendation No. 134, and the Social Protection Floors Recommendation, 2012 (No.202), are of particular importance. These instruments provide an international reference framework setting out the range and levels of social security benefits that are necessary and adequate for ensuring income

maintenance and income security (in particular with regard to old-age pensions), as well as access to health care, including long-term care, in old age. The extension of coverage to all older persons is an underlying objective of these standards, with the aim of achieving universality of protection, as explicitly stated in Recommendation No. 202 and reflected in SDG 1.3.

For example: With regard to old age pensions, Conventions Nos 102 and 128 and Recommendation No. 131 contain provisions for the payment of pensions in old age, at guaranteed levels, upon completion of a qualifying period, and their regular adjustment to maintain pensioners' purchasing power. Persons who have reached pensionable age through earnings-related contributory pensions are guaranteed minimum benefit levels, or replacement rates corresponding to a prescribed proportion of an individual's past earnings – in particular for those with lower earnings - and/or by flat-rate non-contributory pensions which can be either universal or means-tested. The guaranteed minimum levels for the latter should be a prescribed proportion of the average earnings of a typical unskilled worker, but the “total of the benefit and other available means ... shall be sufficient to maintain the family of the beneficiary in health and decency” (Convention No. 102, Art. 67(a)). Recommendation No. 202 completes this framework by calling for the guarantee of at least basic income security to all persons in old age as a matter of priority. Such a guarantee acts as a safeguard against poverty, vulnerability and social exclusion in old age for people, which is particularly relevant for people not yet covered by contributory pension schemes. It is also of high relevance to pensioners whose benefits are affected by the financial losses suffered by pension funds, whose pensions are not regularly adjusted to changes in the costs of living, or whose pensions are simply inadequate to secure effective access to necessary goods and services and allow life in dignity. ILO social security standards thus provide a comprehensive set of references and a framework for the establishment, development and maintenance of old-age pension systems at national level.

An important social policy challenge facing ageing societies is to secure an adequate level of income for all people in old age without overstressing the capacities of younger generations. In view of the financing and sustainability challenge faced by social security systems in the context of demographic change, the State has a vital role to play in forecasting the long-term balance between resources and expenditure in order to guarantee that institutions will meet their obligations towards older persons. In this respect, the principle of the overall and primary responsibility of the State (reflected in ILO social security standards, strongly reaffirmed by Recommendation No. 202), will undoubtedly play an important role in how future governments are held accountable for the sustainability of national social security systems in view of, among other factors, demographic change.

In line with the Constitution, the ILO's Committee of Experts on the Application of Conventions and Recommendations recently published an in-depth General Survey on member States' national law and practice, on the application of the Social Protection Floors Recommendation, 2012 (No. 202). This Recommendation, adopted quasi unanimously (one abstention) by the governments, as well as employers' and workers' organisations of the ILO's now 187 member States, guides countries in building nationally-defined social protection floors, as part of their comprehensive social protection systems. These social protection floors should guarantee at least a basic level of social security to all, ensuring at least effective access to essential health care and basic income security throughout the life course, including for older persons.

This report has been established mainly on the basis of reports received from member States and information transmitted by employers' and workers' organizations. These responses allowed the Committee of Experts to examine the impact of Conventions and Recommendations, to analyse the difficulties indicated by governments as impeding the application of the Recommendation, and to identify means of overcoming these obstacles. Relevant chapters for the discussion of the Open-ended

Working Group on Ageing include in particular Chapter 5 on essential health care and Chapter 8 on basic income security for older persons.

This report is available here:

- ILO (2019) Universal social protection for human dignity, sustainable development and social justice: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202). Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf.

Prior to this report, the Committee of Experts on the Application of Conventions and Recommendations had also published an in-depth General Survey on member States' national law and practice, on the application of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

- ILO (2011) *Social Security and the Rule of Law: General Survey concerning social security instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization (Report III (Part 1B))*. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_152602.pdf.

In addition, the following publication can be useful:

- ILO (2017) Building social protection systems: International standards and human rights instruments. Geneva: International Labour Office. Available at: <http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=54434>.

Global trends as regards the mechanisms providing social protection for older persons, legal and effective coverage of old-age benefits, expenditure on social protection for older persons, the question of adequacy and challenges can be found in the following publications:

- ILO (2017) World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals. Geneva: International Labour Office. Available at: <http://www.social-protection.org/gimi/gess/ShowWiki.action?id=594>.
- ILO (2018) Social protection for older persons: Policy trends and statistics 2017-19 / International Labour Office, Social Protection Department. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_645692.pdf
- Scheil-Adlung, Xenia. Global estimates of deficits in long-term care protection for older persons / Xenia Scheil-Adlung; International Labour Office. - Geneva: ILO, 2015. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_407620.pdf

Specific reference can also be made to specific policy trends concerning old-age pension schemes, notably the reversal the privatisation of pension schemes:

- ILO (2018) Reversing Pension Privatizations: Rebuilding public pension systems in Eastern Europe and Latin America /International Labour Office – Geneva, Available at: <https://www.social-protection.org/gimi/RessourcePDF.action?id=55301>

With particular reference to extending the coverage of old-age benefit in particular in the context of non-standards forms of employment and in the future of work, consultation can be made of:

- ILO (2016) Non-standard forms of employment: understanding challenges, shaping prospects. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534326.pdf.
- Global Commission for the Future of Work, 2019. Work for a brighter future. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf
- Behrendt C and Nguyen QA (2018) Innovative approaches for ensuring universal social protection for the future of work. ILO Future of Work Research Paper Series 1. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_629864.pdf
- Behrendt, C., Nguyen, Q.A., Rani, U., 2019. Social protection systems and the future of work: Ensuring social security for digital platform workers. International Social Security Review 72, 17–41. <https://doi.org/10.1111/issr.12212>

Questions concerning inequalities and gender gaps and the link with social protection can be specifically found:

- ILO (2016) Women at Work: Trends 2016. Geneva: International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf.
- ILO (2017) Women in Non-Standard Employment. INWORK Issue Brief 9. Geneva: International Labour Office. Available at: http://ilo.ch/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556160.pdf.
- ILO (2017) World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals. Geneva: International Labour Office. Available at: <http://www.social-protection.org/gimi/gess/ShowWiki.action?id=594>.
- ILO (2019) A quantum leap for gender equality: For a better future of work for all. Geneva: International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_674831.pdf.
- ILO, 2018. Care work and care jobs for the future of decent work. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf

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

Some considerations as regards the availability of the social security system, in line with the international human rights and social security framework, include:

- 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, in particular R202 and C102 provide concrete guidance in establishing social protection systems including social protection floors (for example, for old age pensions this includes the pensionable age, qualifying period, scope of coverage and the form, duration, and level of old-age benefits);
- In particular, Recommendation No. 202 sets out a two-dimensional approach for the extension of social security coverage, including of older persons, with the aim to progressively achieve universal protection of the population and the building of comprehensive national social security systems. It calls for effective national social security extension strategies that secure at least minimum levels of basic income security and access to essential health care guarantees for all in need, including for all older persons, throughout the life cycle (the horizontal dimension) and progressively ensure higher levels of protection guided by ILO social security standards, including C102 (the vertical dimension).
- According to ILO instruments, old-age benefits should be provided through the most effective and efficient combination of schemes and benefits, in cash or in kind, pursuant to the national context, this can through earnings-related contributory schemes or non-contributory schemes, whether or not means-tested, or a combination of these schemes.
- In this regard, the CEACR, highlighted the importance of designing and implementing social insurance and social assistance benefits as complementary means of action, and of carefully coordinating and aligning schemes and benefits, with the common objective of alleviating poverty and social exclusion¹
- Both the CEACR and the CESCR set out that non-contributory schemes play an important role in ensuring that persons who are not, or are not sufficiently covered by contributory schemes benefit from at least basic protection. Furthermore, social and health care services should be provided to support families with elder care responsibilities, especially for low-income families where elderly people remain at home.²
- The CEACR also emphasizes the importance of contributory pension schemes as a fundamental element of income security in old age, as they provide pensions that are related to previous earnings, and may therefore constitute a better form of income security than pensions provided under non-contributory, means-tested or universal schemes³
- The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system, these principles,

¹ ILO (2019), para. 542

² The High-Level Commission on Health Employment and Economic Growth underlined the role of professional health and social care services in the achievement of the rights to health and social security. In this respect, the global economy is projected to create around 40 million new health sector jobs by 2030; mostly in middle- and high- income countries. Despite the anticipated growth in jobs there will be a projected shortage of 18 million health workers to achieve and sustain the Sustainable Development Goals primarily in low and lower-middle income countries. The rising global demand and need for health and care workers offers the opportunity to generate employment in areas where decent jobs are most needed and to ensure that the burden of unpaid care does not disproportionately fall on women.

³ ILO (2019), para. 545

in particular the primary and overall responsibility of the State are also provided for in particular for the due provision of benefits and for the proper administration of the institutions and services concerned under R202 and C102;

- 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.

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

Some considerations as regards the adequacy of social security benefits in line with the international human rights and social security framework, include:

- Adequate old-age pensions are essential to ensure the right to at least basic income security and life in dignity in old age and are a major component of national social security systems in terms of the numbers of persons protected, beneficiaries and expenditure. Similarly, effective access to health care should be designed in a way that does not lead to hardship and increased risk of poverty due to the financial consequences of seeking health care.
- 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 (...) an adequate standard of living (...) as contained in article (...) 11 the Covenant. In this regard, reference can be made to the benchmarks established under ILO social security standards. In particular, ILO social security standards provide a framework of internationally accepted minimum standards with regard to social protection systems including for older persons;
- There are many ways to assess adequacy, for social protection floors, adequacy means that the basic social security guarantees should prevent or at least alleviate poverty, vulnerability, and social exclusion, and allow life in dignity. In this regard, it can be noted that the CEACR emphasized that non-contributory pension schemes can be effective for poverty reduction, on condition that the benefits, together with other support measures, are not below the accepted poverty line or the monetary value of a set of necessary goods and services⁴. Said differently, the determination of the levels of these guarantees should be guided by the objective of establishing and maintaining adequate old-age benefits which, together with other social benefits and services, should be sufficient to ensure access to the goods and services defined as necessary and allow life in dignity.
- The adequacy of pensions does not only depend on the level of cash benefits provided, but also on the cost of essential services, such as health care, long-term care, food, housing and transport. In this regard, the CEACR emphasized the need to ensure linkages in particular between pension benefits and health and long-term care; for example by ensuring that any out-of-pocket payments that are required for care, and particularly long-term care, do not jeopardize adequate income security⁵.
- Methods applied should also 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 human rights, (see in this regard provisions of R202). In this regard, the CEACR has underlined the importance of establishing and maintaining transparent procedures for the regular review of the basic social security guarantees set out in R202. Tripartite participation, as well as consultation with the representatives of persons concerned, should be ensured in this context⁶.

⁴ ILO (2019), para. 550

⁵ ILO (2019), para. 560

⁶ ILO (2019), para. 559

- Recommendation No. 202 sets out that persons in need of health care throughout the life cycle should not face hardship and an increased risk of poverty due to the financial consequences of effectively accessing essential health care. It further underlines that to be considered adequate, including by human rights bodies monitoring compliance with the right to health, health services need to meet the criteria of availability, accessibility, acceptability and good quality (Recommendation No. 202, paragraph 5a).

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

Some considerations as regards the accessibility of social security benefits in line with the international human rights and social security framework, include:

- **Coverage:** 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 the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary. Universal Social Protection is central to the 2030 Agenda for sustainable development and in particular target 1.3 “implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and vulnerable”.⁷ This echoes the provisions of R202 which call on Member States to ensure at least a basic level of social security all older persons in need as well as essential health care through nationally-defined social protection floors
- **Eligibility:** Qualifying conditions for benefits must be reasonable, proportionate and transparent. States can define the pensionable age in accordance with their national situation, demographic characteristics and international obligations⁸. The CEACR for example observed that increases in the pensionable age above the age of 65 should be justified not only by a rise in the average life expectancy of society as a whole, but should also take into account differences between the various groups of the population in health status, life expectancy, working ability and the labour market opportunities of those concerned⁹.
- The withdrawal, reduction or suspension of benefits should also be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law; in this regard, ILO standards establish internationally agreed qualifying conditions as regards access to medical care and old-age benefits (in particular reference can be made to R202 and C102 but also C128)
- **Physical access:** 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.

⁷ In this respect, the Call to Action issued by the Global Partnership for Universal Social Protection (USP2030), co-led by the ILO and the World Bank may be relevant (see www.usp2030.org), as well as a recent ILO issue brief : ILO, 2019. [Universal Social Protection: Key concepts and international framework](#), Social Protection for All Issue Brief. International Labour Office, Geneva.

⁸ For example, if a country has ratified the respective parts of Convention No. 102 (which provides that the pensionable age “shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned.”) , Convention No. 128 (which provides that the prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority “with due regard to demographic, economic and social criteria, which shall be demonstrated statistically” adding that if “the prescribed age is 65 years or higher, the age shall be lowered, under prescribed conditions, in respect of persons who have been engaged in occupations that are deemed by national legislation, for the purpose of old-age benefit, to be arduous or unhealthy”) or the European Code of Social Security
⁹ ILO (2019), para. 514

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*

As regards, equitable access, the following considerations can be made:

- Social protection systems are important tools to work towards social inclusion and equality, including gender equality, and to address inequalities and discrimination. In effect, universality can only be achieved through non-discriminatory, inclusive and responsive social protection systems that need the needs of a diverse population
- Echoing international human rights instruments, and fundamental principles and rights at work, international social security standards are recognisant of these key principles. Notably, R202 calls on Members to apply the principles of social inclusion, non-discrimination, gender equality, responsiveness to special needs and respect for the rights and dignity of persons protected at all stages of developing and implementing comprehensive social protection systems, including social protection floors (Paragraph 3(d), (e) and (f))
- In this regard, the CEACR has emphasized that social security systems should be non-discriminatory and inclusive, in both law and practice, and to address specifically the needs of particularly vulnerable social groups and States should therefore identify carefully such vulnerable groups of older persons and to take all the necessary measures to progressively establish basic social security guarantees for all¹⁰. Special consideration should be given for example to the following vulnerable social groups: older women, older persons with age-related disabilities and illnesses, older persons affected by HIV/AIDS, older persons in rural areas, older persons in non-agricultural informal employment. For example austerity and fiscal consolidation measures should especially not unduly undermine the basic guarantees for the most vulnerable and persons with special needs, such as these categories.
- 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 avoid any adverse effect on the levels of benefits and the form in which they are provided, these core principles been reiterated in the body of instruments adopted by the ILO and notably R202;

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

- Participation in decision-making through national social dialogue is the most effective method of achieving equitable progress that leaves no one behind, and progress toward meeting SDGs 1 and 3;
- The CEACR has also, in this regard, emphasized the importance of broad, inclusive and effective social dialogue, as well as social participation involving all stakeholders, namely the State and the social partners, in addition to representative and relevant organizations of persons concerned, for the development of comprehensive social security systems, including social protection floors, underlying thereby, the importance of an enabling legal and institutional environment to promote effective social dialogue and social participation in relation to social protection at the national level¹¹;
- Broadly speaking, as underlined in Recommendation No.202, transparent procedures for the regular review of the basic social security guarantees should be established, with tripartite participation, as well as consultation with the representatives of persons concerned (paragraph 3(r)).The indispensable role of broad and effective social dialogue and social participation is more specifically reaffirmed in relation to: the establishment and review of the

¹⁰ ILO (2019) para. 524-541

¹¹ ILO (2019) para. 100

levels of the basic social security guarantees (Paragraph 8(d)) that form part of social protection floors; the formulation and implementation of national social security extension strategies (Paragraph 13(1)); and the assessment of progress (Paragraph 19);

- The need for representatives of persons protected to participate in the governance and administration of social security schemes or to be associated therewith in a consultative capacity (whenever the administration is not entrusted to an institution regulated by public authorities or to a government department responsible to a legislature) is specified in Convention No. 102 and other ILO social security standards¹²;
- Recommendation No. 202 builds on the same idea by calling, in addition to the usual participation of the social partners, for broader consultations with representatives of persons concerned who are neither workers nor employers, such as older persons, and with those who may not be fully represented by established social dialogue mechanisms;
- Meaningful participation also means that 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;

State obligations

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

Some considerations as regards the measures that States can undertake to respect, protect and fulfil the right to social security benefits include:

- The human rights framework and the ILO social security standards, with their corresponding monitoring mechanisms, provide a sound and tested base to bring national social security systems under the rule of law. Ratifying and implementing these standards therefore plays a critical role in guiding the development of comprehensive and rights-based social protection systems worldwide.¹³
- A central principle in international social security is the overall and primary responsibility of the State (this is specified both in C102 and R202). This concerns the establishment and implementation of national social protection floors, the development and implementation of a national social security extension strategy, and the monitoring of progress, with the tripartite participation of representatives of workers and employers, and in consultation with other relevant and representative organizations of persons concerned. In this regard, the State has, for example, the general responsibility for the provision of defined benefits and the administration of the social security institutions and services concerned. This CEACR has underlined that this also means that the State should take all necessary measures to ensure that their policy, legal and institutional frameworks provide for such responsibility to be assumed fully, irrespective of the method of financing or administration adopted. Furthermore, while social protection may be delivered and implemented using a diversity of methods and approaches, in line with R202, the State should remain responsible for the oversight of the system¹⁴.

¹² 2011 General Survey, paras 550–558

¹³ In this context, reference is made in particular to the joint UN web platform on social protection and human rights : www.socialprotection-humanrights.org.

¹⁴ ILO (2019), para. 86-87

- Accountability mechanisms are also central to strengthening and securing the implementation of old-age benefits including through a rights-based approach (see question 4.). The right of the beneficiary to complain and appeal is enshrined in ILO Standards.

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?*

Some considerations in this regard are as follows:

- The implementation of a rights-based approach to guaranteeing universal social protection of older persons is key. This means placing human beings at the centre and calling on States to ensure that plans, policies and programmes are anchored in a system of rights and corresponding obligations established by international law. The importance of ensuring both statutory and effective coverage for achieving universality of protection was underlined by the CEACR¹⁵.
- The body of standards produced by the ILO over the years has brought into existence international social security law, which gives a firm legal foundation to the human right to social security and has brought national social security systems under the rule of law. The interaction between international social security law and human rights law has acted as the engine for the progressive development of social security worldwide, substantiating human rights through minimum standards of protection.
- In particular, ILO standards establish qualitative and quantitative benchmarks which together determine the minimum standards of social security protection to be provided by social security schemes for older persons. Such benchmarks address the risk to be covered, the persons who should be covered, the type and level of the benefits, entitlement conditions, including qualifying periods, and the minimum duration of benefits. In addition, these standards set out common rules of collective organization, financing and management of social security, as well as principles for the good governance of national systems. As such, international social security standards can serve as useful tools for States to draft and implement national policies and legal frameworks, in consultation with representatives of persons protected, and notably employers and workers.
- The only way of effectively guaranteeing social security rights to older persons is to specify clearly by law the role, responsibilities and rights of all the parties concerned. More specifically national laws and regulations should specify: the material and personal scope of coverage, the type and nature/range and duration of benefits, the level or amount of benefits, and the qualifying conditions¹⁶.
- Laws and regulations that are clear and specific constitute a framework against which older persons protected can obtain redress. In this regard, effective complaint and appeal procedures that are accessible for all and that safeguard the rights and dignity of protected persons are crucial to ensure due process, and should also be specified by law;
- The CEACR emphasized that a clear legal framework allows for more effective supervision by the State, based on a long-term strategy, as it generally requires public monitoring of the financial sustainability of schemes and, in the case of non-contributory benefits, the allocation of the necessary resources from the state budget. A legislative basis therefore ensures the continuity of rights and entitlements over time, contributes to the predictability

¹⁵ ILO (2019), para. 124

¹⁶ ILO (2019), para. 124

and sustainability of the social security system and the accountability of the institutions responsible for its governance, and acts as a safeguard against arbitrary governance¹⁷.

- Nevertheless, while legal provisions provide predictable and enforceable rights; it can be noted that these are more often lacking in the case of non-contributory old age benefits as well as long-term care benefits.

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?*

- ILO standards are not, in principle, prescriptive as regards the type of mechanism by which social protection should be guaranteed, provided that these meet the principles and standards set out in such standards. In fact, R202 clearly sets out that social security guarantees should be delivered and implemented through the most effective and efficient combination of schemes and benefits, in cash or in kind, pursuant to the national context (paragraph 9(1)).
- It can be noted that, while acknowledging the role that community-based and private arrangements play in delivering care and support, they cannot be considered a substitute for social protection mechanisms under the overall and primary responsibility of the State (see Question 3). In other words, the State should remain responsible for the oversight of the system.
- It can be noted that international social security standards lay out in particular that, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management under prescribed conditions; national legislation may likewise decide as to the participation of representatives of employers and of the public authorities¹⁸

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?*

While this question addresses in the first line to national governments, reference is made to the ILO World Social Protection Report 2017-19 for relevant experiences.

¹⁷ ILO (2019), para. 173

¹⁸ Convention No. 102, Article 72, Convention NO. 128, Article 36