**Joint submission by AGE Platform Europe, HelpAge International, The Law in the Service of the Elderly and the National Association of Community Legal Centres Australia[[1]](#footnote-1)**

**Open-ended Working Group on Ageing, 10th Working Session, 15-18 April 2019**

**Social protection and social security (including social protection floors)**

**Authors**

This joint submission is authored by Robin Allen (Cloisters), Andrew Byrnes (Australian Human Rights Institute, Faculty of Law, University of New South Wales), Israel (Issi) Doron (University of Haifa), Nena Georgantzi (AGE Platform Europe / National University of Ireland Galway), Bill Mitchell (National Association of Community Legal Centres, Australia) and Bridget Sleap (HelpAge International). Our views do not necessarily reflect the broad and consensual positions of the organisations we represent, which will be submitted separately.

**Context of Response**

This response addresses the guiding questions from a global perspective. It summarises a more comprehensive statement which will be provided to the 10th working session.

**Question 1: International legal framework**

Despite provisions on the right to social security and social protection,[[2]](#footnote-2) there are unique disadvantages and aspects of the right in older age which are not adequately provided for in existing human rights law.

International human rights standards are needed to guarantee right of older persons to social security and social protection without discrimination based on age or any other ground, so they can live with dignity and fully participate in society.

**Scope**

* The right includes social security and social protection measures, whether in cash or kind, to ensure an adequate standard of living, adequate income security, access to health care, medication and assistive devices, and access to care and support services for independent living in older age.

**Non-discrimination and equality**

* All older people should enjoy this right without discrimination on the ground of their age or any other grounds.

**Availability**

* Social security and social protection schemes must be universally available and in place to ensure older people are provided with social security and social protection for the relevant risks and contingencies they face, including in relation to care and support.

**Adequacy**

* Older people have the right to social security and social protection measures, whether in cash or kind, that are of a high enough value, quantity and quality, and for the full period of life for an adequate standard of living and so that they can live autonomous, independent lives with dignity and can fully participate in society.

**Acceptability**

* Older people have the right to social assistance and in-kind social security that is appropriate and acceptable for their needs and preferences.

**Accessibility**

* All older persons have the right to access social security and social protection schemes without discrimination.
* Older people should have access to support in application processes for social security and social protection measures without delay, including older persons without identity documentation.
* Older people have the right and access to information on all aspects of social security and social protection schemes, including eligibility and qualification.
* Delivery mechanisms for social security and social protection measures must be adapted so they are accessible and affordable for all older people without discrimination.
* The right shall include access to, and portability of, social security and social protection measures.

**Autonomy**

* Older people have the right to unconditional, autonomous use of income from social security and social protection schemes.

**Accountability, remedies and redress**

* Older persons have the right to access procedures for complaint, appeal and redress.
* Older persons have the right to arrears of claim or payment, including but not limited to where there has been a delay in payment processing, incorrect cancellation or reduction.

**Question 2: Guaranteed universal coverage: adequate standard of living**

Many older persons around the world experience poverty and social exclusion due to the total or inadequate existence of social protection mechanisms. Thirty two percent of the world’s working age population are not covered by legal guarantees of either a contributory or non-contributory pension. This lack of legal coverage is higher for women, 36 per cent of whom have no legal guarantee of a pension.[[3]](#footnote-3) This global figure masks significant regional variations, ranging from nearly 100 per cent legal coverage in higher income countries down to 23 per cent in sub-Saharan Africa and 24 per cent in Southern Asia.[[4]](#footnote-4) The number of older persons who actually receive social security and social protection measures depends on effective implementation of the law and is therefore likely to be lower than legal coverage rates.

**Question 3: Guaranteed universal coverage: healthcare and care and support for independent living**

In terms of access to adequate and affordable health care, 60 per cent of older persons surveyed in low- and middle-income countries[[5]](#footnote-5) and up to 10 per cent in high-income countries[[6]](#footnote-6) report they cannot access essential healthcare because of the cost.

The prevailing expectation that family members will provide support to their older relatives has meant care and support is rarely part of the implementation of the right to social security. As a result, many older persons do not have access to essential care and support services because their families do not provide care and support or they have no family members to provide services. The International Labour Organisation estimates that globally, 13.6 million more formal care workers are needed to provide the care and support that older people need.[[7]](#footnote-7)

**Guiding Question 4: Adequacy**

An adequate standard of living and adequate income cannot only be measured in terms of paying for basic survival needs. Rather, under human rights standards, it must allow for full participation in the community and society and guarantee personal dignity. Pensions or other social security benefits tied to poverty thresholds do not allow for an adequate standard of living or full participation in society or a dignified life.[[8]](#footnote-8) The value of non-contributory schemes may be set too low and not fully compensate for lack of coverage of contributory schemes[[9]](#footnote-9) and for many the impact of pension reform and privatization of pensions mean that their pensions do not meet adequacy standards.[[10]](#footnote-10) Payments may also be inadequate for specific sub-populations[[11]](#footnote-11) to enjoy an adequate standard of living and cover their needs, both material and in terms of services.

**Guiding Question 7: Equality and non-discrimination**

Social protection and social security schemes currently discriminate against particular groups of older persons in a number of ways:

* Gender gaps in social security and social protection are the result of multiple, intersecting and cumulative discrimination against women throughout their lives. These inequalities render women’s contributions to social security systems significantly lower than men’s, leading to lower coverage rates and substantially lower benefit levels for women. Even in countries where women enjoy broad access to pensions, their benefit levels are often only a fraction of men’s. In the European Union, women receive a pension that is 38 per cent less than that of men.[[12]](#footnote-12) In Australia there still remains a significant disparity between the retirement incomes of men and women. In 2015-16 men held around 61.2 per cent of total account balances compared with around 38.7 per cent for women.[[13]](#footnote-13)
* Accumulated discrimination against women is exacerbated by gender biases in the design of social security and social protection systems. The conditions for entitlement, the links between benefits and past earnings, elements of redistribution, the provision for widows and divorcees, indexation and retirement age all impact on gender inequality in older age. As women live longer than men, they are also more exposed to poverty if pension benefits are not adequately indexed to take into account inflation and changes to the cost of living.
* In some countries, penalties are imposed within social security and pensions systems on older persons who choose to work beyond normal retirement age.[[14]](#footnote-14) For example, unemployment benefits are not available for older persons who are entitled to a pension and thereby discriminate against older workers.[[15]](#footnote-15)
* Older migrant workers whose pensions are not portable are penalized.
* Age limits and other age-related barriers are routinely applied by States parties in legal entitlements to disability benefits and services and impede older persons with disabilities from living independently in the community on an equal basis with others.[[16]](#footnote-16) [[17]](#footnote-17) [[18]](#footnote-18) [[19]](#footnote-19)
* Age limits may be applied to benefits designed to make health care or disability insurance[[20]](#footnote-20) accessible and affordable.[[21]](#footnote-21)
* Older persons who are homeless or without identity document may be excluded from universal schemes.
* Pension schemes may not take into account disparities in life expectancy, and therefore discriminate against those with lower life expectancies. For example, the pension age in Australia is set at between 65 and 67 years of age (depending on year of birth) and life expectancy for indigenous Australians is 10.6 years lower than that of the non-Indigenous population for males (69.1 years compared with 79.7) and 9.5 years for females (73.7 compared with 83.1).[[22]](#footnote-22)
* As technologies develop, unequal access to new technologies for care and support for independent living will become an important source of inequality in older age.[[23]](#footnote-23)
* Older people may be excluded from insurance coverage due to upper age restrictions or prohibitively high payments based on older age for health insurance. This discrimination on the basis of age is currently lawful in many countries despite the resulting disadvantages for older people in terms of their access to these forms of social protection.

**Guiding Question 8: Accountability mechanisms**

* Even where complaint mechanisms exist, older people may not have information about, or feel comfortable using, complaints procedures. For example, in a study in Mozambique, 68 per cent of older people surveyed said they did not know who to make a complaint to about their benefit from the Basic Social Subsidy Programme.[[24]](#footnote-24)
* Old age pensions and other social protection instruments based on contributory systems are prone to lack long-term safeguards regarding sustainability. All information regarding the various aspects of the actual contributions and their management should be transparent and available, along with mechanisms to ensure the financial soundness of the system for the full life expectancy of the insured population.

**Guiding Question 9: Judicial and non-judicial mechanisms**

Older persons face particular barriers to seeking information on their legal rights and accessing legal proceedings. A recent report in Australia found that a significant number of older persons had low awareness of their rights, found it difficult to identify a legal problem and undertook minimal information-seeking. Difficulties accessing free legal assistance and legal aid, being subject to guardianship or experiencing financial abuse prevented older people from taking legal action.[[25]](#footnote-25)

1. \* For further information contact Bridget Sleap [bsleap@helpage.org](mailto:bsleap@helpage.org) [↑](#footnote-ref-1)
2. For example, the Universal Declaration of Human Rights Article 22, the International Covenant on Economic, Social and Cultural Rights Article 9, the Convention on the Elimination of All Forms of Discrimination Against Women Article 11 and Convention on the Rights of Persons with Disabilities Article 28 [↑](#footnote-ref-2)
3. World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals International Labour Office – Geneva: ILO, 2017, page 78 [↑](#footnote-ref-3)
4. World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals International Labour Office – Geneva: ILO, 2017, page 79 [↑](#footnote-ref-4)
5. WHO, *World Report on Ageing and Health*, 2015, p.91 [↑](#footnote-ref-5)
6. WHO, *World Report on Ageing and Health*, 2015, p.92 [↑](#footnote-ref-6)
7. . Scheil-Adlung X, *Extension of Social Security: Long-term care protection for older persons: A review of coverage deficits in 46 countries*, ESS-Working Paper No. 50, ILO, 2015, p.xii [↑](#footnote-ref-7)
8. European Minimum Income Network thematic report on older people, 2014, <https://eminnetwork.files.wordpress.com/2014/12/emin-2014-adequacy-older-people-en.pdf> [↑](#footnote-ref-8)
9. World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals International Labour Office – Geneva: ILO, 2017, page 87 [↑](#footnote-ref-9)
10. World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals International Labour Office – Geneva: ILO, 2017, page 93 [↑](#footnote-ref-10)
11. For example, older women, older persons with disabilities, older widows, older migrants or refugees, older indigenous persons and those who have never contributed to a social security or social protection scheme. [↑](#footnote-ref-11)
12. Gender gap in pensions in the European Union Journalist Thematic Network Riga, June 2015 [↑](#footnote-ref-12)
13. https://www.superannuation.asn.au/ArticleDocuments/359/1805-Women\_Security\_Retirement.pdf.aspx?Embed=Y [↑](#footnote-ref-13)
14. Report of the Independent expert on the enjoyment of all human rights by older persons, A/HRC/30/43, 2015, paragraph 107 [↑](#footnote-ref-14)
15. <https://ageing-equal.org/ageism-in-lifelong-learning/> [↑](#footnote-ref-15)
16. AGE-Platform Europe, Written submission to the Committee on the Rights of Person with Disabilities on Draft of General Comment on Article 5 Equality & Non-Discrimination, 2017, <https://age-platform.eu/sites/default/files/AGE_comments_on_Draft_GCArt5_CRPD_Nov2017.pdf> [↑](#footnote-ref-16)
17. Report of the Independent expert on the enjoyment of all human rights by older persons, A/HRC/36/48, 2017, paragraph 58 [↑](#footnote-ref-17)
18. Submission by the European Network on Independent Living to the 9th OEWGA, 2018, <https://social.un.org/ageing-working-group/documents/ninth/Inputs%20NGOs/ENIL_Autonomy.pdf> [↑](#footnote-ref-18)
19. <https://www.mdfoundation.com.au/content/ndis-age-discrimination-acknowledged> [↑](#footnote-ref-19)
20. In Australia once, a person turns 65 they are not entitled to assistance under the National Disability Insurance Scheme: https://www.ndis.gov.au/what-consider-i-apply/am-i-eligible. [↑](#footnote-ref-20)
21. Discrimination in Belgian health care: People 65+ are excluded from refund for consulting a psychologist <http://ageing-equal.org/discrimination-in-belgian-health-care/> [↑](#footnote-ref-21)
22. <https://www.aihw.gov.au/reports/life-expectancy-death/deaths-in-australia/contents/life-expectancy> [↑](#footnote-ref-22)
23. Report of the Independent expert on the enjoyment of all human rights by older persons, A/HRC/36/48, 2017, paragraph 64 [↑](#footnote-ref-23)
24. Pension Watch, <http://www.pension-watch.net/pensions/voice-and-accountability/mozambique-older-citizen-monitoring-data/> [↑](#footnote-ref-24)
25. The Law Council of Australia, *The Justice Report - Older Persons*, August 2018, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Older%20Persons%20%28Part%201%29.pdf> [↑](#footnote-ref-25)