

Open-Ended Working Group on Ageing

Guiding questions for the thirteenth session

Defining the normative content of the issues examined at the twelfth session

Focus area 1: Right to health and access to health services

Legal and policy frameworks

ILO social security standards on social health protection (SHP)

ILO Convention No. 102 calls on States to provide social protection to cover those health care interventions needed to “maintain, restore or improve” the health of the protected persons and their ability to work and to attend to their personal needs. Moreover, it is stated in Medical Care Recommendation, 1944 (No. 69) that the range of services covered should be comprehensive. The scope of a health care package should be determined and defined through a national dialogue process, with due regard accorded to the principles of availability, accessibility, acceptability and quality and the package should be regularly assessed to ensure that it remains sufficient to ensure a life with dignity.

In an ILO report on social health protection in the Asia and Pacific regions to boost Universal Health Coverage, it is observed that “States should also seek to provide higher levels of protection as soon as possible using guidance provided by Convention No. 102 and more advanced standards, notably Convention No. 130. Convention No. 102 provides guidance regarding a minimum package of health care, which should include general practitioners’ services and provide a basic package of PHC (primary health care). Moreover, it should include reproductive, maternal new-born and child health (RMNCH) services, including antenatal care, confinement, postnatal care and hospitalization if required, specialist and hospital care and essential prescription pharmaceuticals, to be complemented by dental care and medical rehabilitation (including prosthetic and orthopaedic devices). The responsibility of national authorities is not only to regulate such entitlements, but also ensure that provided services meet the criteria of availability, adaptability, acceptability and quality.

ILO standards stipulate that institutions responsible for SHP shall make a proactive effort to encourage protected populations to utilize population health interventions and more generally promotion and prevention services. This is in line with the vision promoted by the WHO on service delivery. Indeed, PHC was early on identified as a central function and a fundamental approach to the delivery of health care.”

When it comes to financial protection, ILO standards allow cost-sharing within limits – “the rules concerning such cost sharing shall be so designed as to avoid hardship” (Convention No.130) – though not for maternity care.

Relevant standards are available as per the following links:

[ILO Income Security Recommendation, 1944 \(No. 67\)](#)

[ILO Medical Care Recommendation, 1944 \(No. 69\)](#)

[ILO Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\)](#)
[ILO Medical Care and Sickness Benefits Convention \(No. 130\) and Recommendation, 1969 \(No. 134\)](#)
[ILO Nursing Personnel Convention, 1977 \(No. 149\)](#)
[ILO Nursing Personnel Recommendation, 1977 \(No. 157\)](#)
[ILO Domestic Workers Convention, 2011 \(No. 189\)](#)
[ILO Social Protection Floors Recommendation, 2012 \(No. 202\)](#)
[ILC Resolution concerning employment and social protection in the new demographic context, 2013](#)
[ILO, Resolution concerning the second recurrent discussion on social protection \(social security\), 2021](#)

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.

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>.

Social health protection coverage and adequacy gaps affecting older persons

Health benefits

While international social security standards (ISSS) have long called for universality of coverage, significant social health protection coverage gaps persist. As illustrated by figure 3, while two thirds of the global population is protected by a social health protection scheme, this proportion is respectively only 16 and 34 per cent in low- and middle-income countries. This absence of social protection combined with insufficient public health expenditure more generally impacts on catastrophic out-of-pocket (OOP) spending on health

from households, which is on the rise globally. Indeed, the number of people incurring catastrophic OOP health spending (classified as expenditure exceeding 10 per cent of their household consumption or income) rose from 940 million to 996 million per year between 2015 and 2017 (WHO and World Bank, 2021).

While ILO social security standards stipulate that the range of services covered should be comprehensive, in practice, specific services are often excluded from benefits packages, such as dental and optometry care. Thus, a recent review of social health protection in Asia and the Pacific revealed that these services were excluded from social health protection entitlements in Cambodia, China, Lao People's Democratic Republic and Viet Nam (ILO, 2021d). Such health care interventions can in fact be essential for enabling individuals to perform daily activities and demand for them tends to increase with age. They can moreover be crucial for the maintenance of general health; thus, poor dental health, for instance, can lead to malnutrition among older persons (Ástvaldsdóttir et al., 2018). Similarly, though rehabilitation is key to the prevention of long-term loss of functional capacities, it is given less prominence than other services in the design of many social health protection schemes (Stucki et al., 2019).

A systematic way of collecting data is urgently needed to understand the extent to which core elements of adequacy of healthcare benefits (benefit packages, costs covered, network of providers) are guaranteed by law. Nonetheless, data available for SDG indicator 3.8.1 provide some insights into the effective coverage for these aspects. Though more data is needed to analyse the situation across a wider range of services, clearly the basic package guaranteed by ILO standards cannot yet be accessed by the majority of the world's population. Laudable progress was made in service coverage over the last two decades, and the service coverage index (SCI) increased as access to essential interventions on communicable diseases improved (WHO 2019d). Analysis shows that remaining deficits in service coverage are unevenly distributed across geographical locations, income levels, population groups and types of health interventions (Lozano et al. 2020). For instance, deficits can be particularly severe for interventions addressing NCDs, while there is a shift towards those conditions in the global burden of disease (Vos et al. 2020). Similarly, LMICs have lower SCI scores than high-income countries, and while service availability has increased, middle-income countries struggle to match the needs of their growing and ageing populations (WHO 2019d). More and better disaggregated data (by sex, age, location, migration status, income) is needed in order to identify more thoroughly the population groups left behind and devise inclusive policies (Lozano et al. 2020).

Long-term-care benefits

Access to LTC should adopt a rights-based approach because it constitutes an enabling right for older persons who experience functional impairments to be able to enjoy other human rights. Their accessing of LTC services is necessary for ensuring their continued meaningful participation in public and family life and for maximizing the contribution they can make to society. With this principle in mind, a number of countries, such as Sweden, have enshrined in their legal framework the right to LTC benefits based on needs rather than means (Schön and Heap, 2018). There is limited data on legal coverage for LTC entitlements and the available evidence highlights important coverage gaps, suggesting that as little as 5.6 per cent of the global population over 65 years of age lives in countries that provide universal legal entitlements to free or affordable LTC (Scheil-Adlung, 2015).

Today, the majority of countries that have recognized the public provision of LTC services in national legislation have done so with conditions of resources for beneficiaries (i.e. with some form of means-test). Out of 60 countries, 55 have targeted or means-tested provisions (Addati et al., 2022). The rationale behind this policy choice is often to contain public expenditure on LTC (ILO, 2017a).

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

- ▶ ILO. 2021. [World Social Protection Report 2020-22](#) chapter 4.4.
- ▶ ILO. 2022. [Long-term care in the context of population ageing: a rights-based approach to universal coverage](#).

- ▶ ILO, UNICEF, UNPRPD, HelpAge International, ADB. 2021. [Social protection and older persons with disabilities](#).
- ▶ 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

Gaps in coverage and working conditions in the health and care sectors

The coverage and adequacy gaps highlighted above are rooted in an inadequate supply of health and care workers which is itself linked to relatively poor working conditions in the care economy in many countries.

The right to health for older persons cannot be achieved without ensuring equitable access to quality health and care services. A fundamental prerequisite for equal access to quality health and care services is the availability of sufficient numbers of adequately trained, supported and protected health and care workers. Yet, many countries face severe challenges in the recruitment, deployment and retention of well-trained and motivated health and care workers where they are needed. Dissatisfaction with working conditions, including low salaries, insufficient resourcing, work overload, long hours, and weak career prospects, are among the main causes of high turnover and attrition rates of health workers in many countries.^{1,2}

The [Nursing Personnel Convention, 1977 \(No. 149\)](#) and its accompanying [Recommendation \(No. 157\)](#) establish minimum standards for decent working conditions, including: hours of work, regulation and compensation of overtime, inconvenient hours and shift work; weekly rest periods; maternity leave; sick leave; and social security for nursing personnel. They are applicable to all categories of persons providing nursing care and nursing services, including those providing health and care services to older persons.

Elderly care (or long-term care) includes services along the continuum of social support, personal care and health care who are often characterised by having a strong relational nature. There is consensus that safety of care recipients is linked to health and care worker safety.³ Therefore, it is important to increase efforts to protect and support health and care workers, including their mental health and well-being, with concrete measures that address the many risks they face. A safe and healthy working environment needs to be secured for health and care workers, just as for all workers, as it constitutes a fundamental principle and right at work.⁴

The composition of the workforce in elderly care is heterogeneous regarding occupations, skills levels and different employment arrangements. Attention has to be paid to care workers who provide home or institutional-based care, often female migrant workers, who are at risk of exploitation and exposure to less favourable working conditions, increased violence & harassment, less social security and lower wages.⁵ Care workers providing home or institution-based care to elderly have been neglected and overlooked for many years. The COVID-19 pandemic has drawn attention to the already overburdened and understaffed long-term care sector and the need for sustainable investments, including in decent working conditions for health and care workers in health and social care systems for elderly.⁶

Policies that aim at ensuring equal access for older persons to health services need to promote employment opportunities, adequate pay, safe and healthy working conditions, access to quality education and training, continuing professional development, career opportunities, equal treatment, and social protection for health and care workers. With the majority of the health and care workforce being female, the gender

¹ D. Blaauw et al.: "[Comparing the job satisfaction and intention to leave of different categories of health workers in Tanzania, Malawi, and South Africa](#)", Global Health Action (2013, 6:19287).

² International Council of Nurses Policy Brief, [The Global Nursing shortage and Nurse Retention](#), 2021.

³ Op.Ed. Guy Ryder, chapter 3, [1863-Sovereign-Strategy-Patient-Safetly-Report-1.pdf \(ssdhub.org\)](#), 2020.

⁴ [A safe and healthy working environment is a fundamental principle and right at work \(Safety and health at work\) \(ilo.org\)](#).

⁵ ILO, TMIWHS/2017 [Improving employment and working conditions in health services](#), 2017.

⁶ ILO Brief : [COVID-19 and care workers providing home or institution-based care](#), 2020.

dimension of providing care to older persons need to be kept in mind as well and policies need to be gender responsive. Therefore, the ILO's decent work agenda and international labour standards play a central role in ensuring access to good quality care for older persons.

The provision of care for elderly people is also facing some long-term structural and economic challenges as it is provided at the intersection of health and social systems. Coordination between those systems is often weak, with a lack of supportive leadership, governance and financing mechanisms, often resulting in high fragmentation and poor regulation of care for elderly.

Access to health and care services for older persons are essential to ensure the right to healthy ageing in dignity and independent living.⁷ Action on strengthening these services, including the health and care workforce, leads to powerful interactions with gains across various SDGs, including SDG 1, 3, 4, 5, 8 and 10. Building sustainable and adequately staffed health and care services for the future to achieve UHC and equitable access to quality care requires developing a well-trained, motivated, and supported health workforce. To progress towards this goal, the health and care sector must be recognized as a contributor to inclusive economic growth, a generator of jobs, and a site for advancing gender equality, providing decent youth employment opportunities, and generating gains across multiple SDGs.

Key ILO Conventions and Recommendations relevant to the health and care sector

- ▶ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- ▶ Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- ▶ Equal Remuneration Convention, 1951 (No. 100)
- ▶ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- ▶ Occupational Safety and Health Convention, 1981 (No. 155)
- ▶ Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- ▶ Nursing Personnel Convention, 1977 (No. 149)
- ▶ Nursing Personnel Recommendation, 1977 (No. 157)
- ▶ Labour Relations (Public Service) Convention, 1978 (No. 151)
- ▶ Violence and Harassment Convention, 2019 (No.190)
- ▶ Violence and Harassment Recommendation, 2019 (No.206)
- ▶ Domestic Workers Convention, 2011 (No, 189)
- ▶ Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)
- ▶ Medical Care Recommendation, 1944 (No. 69)
- ▶ Social Security (Minimum Standards) Convention, 1952 (No. 102)
- ▶ Employment Injury Benefits Convention, 1964 (No. 121)
- ▶ Medical Care and Sickness Benefits Convention, 1969 (No. 130)
- ▶ Medical Care and Sickness Benefits Recommendation, 1969 (No. 134)

The following publications provide an overview of the issues at stake from a workforce perspective:

- ▶ 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.

⁷ Addati et al. (2022) [Care at work: Investing in care leave and services for a more gender equal world of work](#), ILO.

- ▶ 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

Data and research

At this point in time, social health protection coverage monitoring at the global level through the ILO World Social Protection Database does not include gender, age or any other type of disaggregation due to the paucity of existing national-level statistics and administrative records.

Further, there is no consolidated monitoring of coverage or adequacy of long-term care social protection benefits at the global level, while there is local and national level evidence that older persons with disabilities incur higher healthcare costs.⁸

There is a paucity of research on integrated models to provide and finance long-term health and social care services responsive to the needs and aspirations of older persons in low- and middle-income country settings. Social protection institutions are increasingly called upon to respond to such needs, but often lack the institutional capacity to do so.

Progressive realization and the use of maximum available resources

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 CEACR⁹.
- ▶ 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 conditions¹⁰.
- ▶ 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

⁸ see this brief: [RessourcePDF.action \(social-protection.org\)](https://www.social-protection.org/ResourcePDF.action)

⁹ ILO (2019), para. 124

¹⁰ ILO (2019), para. 124

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 and sustainability of the social security system and the accountability of the institutions responsible for its governance, and acts as a safeguard against arbitrary governance¹¹.
- ▶ 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.

Equality and non-discrimination

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 all¹². 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;
- ▶ 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).

¹¹ ILO (2019), para. 173

¹² ILO (2019) para. 524-541

Accountability

Participation of older persons in the design and administration of the social security system, including regarding health care benefits:

- ▶ 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 level¹³;
- ▶ 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 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 standards¹⁴;
- ▶ 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;

¹³ ILO (2019) para. 100

¹⁴ 2011 General Survey, paras 550–558

Focus Area 1: Contribution of older persons to sustainable development

The ILO has developed a series of international standards which relate to the protection of older persons. These provide guidance on how to build national frameworks aimed at securing both their participation to the sustainable development of their country while still active by guiding the development of adapted labour frameworks (See the ILO Older Workers Recommendation No.162) as well as by means of social security measures aimed at guaranteeing their income security when they retire from the labour market. In particular, ILO R162 is of added value as it guides countries in designing and implementing a national policy to improve working conditions and environment at all stages of working life with a focus on measures to enable older workers to continue in employment under satisfactory conditions

[https://www.bing.com/ck/a?!&&p=2c297061ecbc9806jmltdHM9MTY3NjU5MjAwMCZpZ3VpZD0yNmRmMzY1MC1iYzZkLTlxNWQzMjEzNi0yN2U1YmQ2NjYwNjgmaW5zaWQ9NTE5MA&ptn=3&hsh=3&fclid=26df3650-bc6d-615d-2136-27e5bd666068&psq=ilo+older+workers+recommendation&u=a1aHR0cHM6Ly93d3cuaWxvLm9yZy9keW4vbm9ybWxleC9lbi9mP3A9Tk9STUxFWFBVQjoxMjEwMDowOjpOTzo6UDEyMTAwX0lMT19DT0RF0lIxNjI&ntb=1\)](https://www.bing.com/ck/a?!&&p=2c297061ecbc9806jmltdHM9MTY3NjU5MjAwMCZpZ3VpZD0yNmRmMzY1MC1iYzZkLTlxNWQzMjEzNi0yN2U1YmQ2NjYwNjgmaW5zaWQ9NTE5MA&ptn=3&hsh=3&fclid=26df3650-bc6d-615d-2136-27e5bd666068&psq=ilo+older+workers+recommendation&u=a1aHR0cHM6Ly93d3cuaWxvLm9yZy9keW4vbm9ybWxleC9lbi9mP3A9Tk9STUxFWFBVQjoxMjEwMDowOjpOTzo6UDEyMTAwX0lMT19DT0RF0lIxNjI&ntb=1))

As regards international social security standards, by establishing an international framework on what should, at a minimum, be guaranteed to older persons who are no longer employed or exercise an independent economic activity, they ensure that this population group does benefit from adequate means of existence and health protection so as to continue to fully be an actor in each society's development. Concretely, by requiring that older persons benefit from access to adequate income security and health protection (see previous contribution of 2020), international social security standards set the stage allowing older persons to continue engaging in sustainable development activities, including, for example, in the care economy often at local levels. During the transition phase that exists prior to retirement from the labour market, adapted unemployment protection and pre-retirement mechanisms also allow societies to organize the transmission of knowledge and know-how from older persons to younger generations by allowing for the maintenance of their salaries when participating to training activities aimed at these categories or reduction of their working hours. Also, as regards in particular older persons' right to freedom of association and expression, ILO social security standards, including those on the protection in old age, are based on the principle of participatory management which aims at ensuring that representatives of protected persons, including older persons, participate to the management of the social security system, including to the health protection and pension schemes. Finally, these standards also allow for associations of pensioners to hold States accountable for the observance of their obligations under ratified international conventions with a view to accessing to prompt remedies and redress when their rights are violated, by formulating observations directed to ILO's supervisory bodies to implementation and legal gaps in national legal setups aimed at giving effect to these ratified conventions.

Focus area 2: Economic security

Definition

1. How are the key human rights relating to older persons' economic security defined in the national legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional, and international legal frameworks?

ILO's legal framework for economic security and non-discrimination of older people:

The ILO has two international labour standards of direct relevance to employment and working conditions of older workers, ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and ILO Older Workers Recommendation, 1980 (No. 162). Article 5 of Convention No. 111 may allow for special measures or assistance to be taken for a variety of categories, including age. With regard to older workers,

Recommendation No. 162 calls for action to promote equality of opportunity and treatment and prevention of discrimination in employment, occupation, access to paid education leave, social security, welfare benefits, and occupational health and safety measures. Recommendation No. 162 also calls for voluntary retirement measures and flexibility in retirement age.

In addition the Employment Policy Convention, 1964 (No. 122) and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) encourage countries to adopt policies and measures that promote the employment of particular categories of workers who encounter difficulties in finding lasting employment, including older workers with a view to achieving greater equality of opportunity in terms of access to employment, as well as equality of treatment concerning conditions of work. As indicated in a recent General Survey by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) a national employment policy adopted in line with these instruments should take into account the profound demographic changes taking place in the world of work and the fact that the proportion of older persons of working age who are unemployed has increased in almost all regions of the world. These workers encounter, in one way or another, obstacles to entering the labour market, which may in some cases constitute discriminatory or unfavourable treatment. These obstacles need to be taken into account in national employment policies to ensure that they are comprehensive and coherent and provide for the necessary inclusive measures, such as reasonable accommodation, where necessary. National employment policies should be designed and implemented in consultation with trade unions and employers' organisations and in cooperation with specific groups, such as older workers, women, those in the informal economy, persons with disabilities and other persons affected in order to foster ownership and cooperation.

Older workers are often subject to multiple forms of discrimination, notably on the basis of gender and disability in addition to age. It is estimated that over 46 per cent of older persons globally live with an impairment. The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168) focus on respecting the principle of equality of opportunity and treatment for persons with disabilities and promoting their access to, retention and advancement in employment, particularly access to employment on the open labour market.

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) apply to all workers without exception – including older workers – and prohibits discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. Even though age is not a ground of discrimination prohibited as such under Convention No.111, age is considered as a physical condition for which there are particular needs and in respect of which special measures of protection and assistance may be necessary in line with Article 5 of the Convention.

Older workers' participation in both formal education and on-the-job training is considerably lower than that of younger workers, mainly because employers are more reluctant to incur training costs for workers who are expected to remain in their firms for a shorter period of time. The Human Resources Development Recommendation, 2004 (No. 195), calls on Members to promote access to education, training and lifelong learning for people with nationally identified special needs, such as older workers (Paragraph 5(g) and (h)).

The Employment Relationship Recommendation, 2006 (No. 198) recognizes that older workers, among others, are more vulnerable where there is lack of clarity concerning the existence of an employment relationship leading to inequality of opportunity and informality. With a view to promoting inclusion, the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) invite Members to take measures to facilitate the transition to formality, while responding to the needs of all categories of persons who have difficulties in finding lasting employment, including older workers.

Home work is often considered to be an alternative way for older workers to access the labour market. The ILO Home Work Convention, 1996 (No. 177), aims at guaranteeing basic rights for those who carry out work

in a place other than the workplace of the employer for a remuneration. However, as noted by the CEACR, homeworkers are often in a vulnerable situation as they lack recognition and visibility, are rarely unionized and have difficulty in contacting a workers' representative in the event of problems. They are not often aware of their rights and the lack of personal contact with colleagues and management makes it more difficult for occupational safety and health or skills-development issues, for example, to be taken into account.

In the context of the COVID-19 pandemic, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) provides that employment strategies should respect human rights and fundamental principles and rights at work (Paragraph 7(e) to (g)), including the promotion of equality of opportunity (Paragraph 7(h)), as well as the elimination of all forms of discrimination and violence (Paragraph 11(f)). The particular vulnerability of certain categories of workers to the most serious decent work deficits is recognized in Paragraph 7(i) of the Recommendation which contains a non-exhaustive list that includes older people.

Older workers have the same fundamental rights at work as all other workers, including the right to freedom of association and collective bargaining, guaranteed by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The ILO Committee on Freedom of Association (CFA) has found that supplementary pension schemes can legitimately be considered as benefits that may be the subject of collective bargaining and that the parties involved in collective bargaining should be able to improve the legal provisions on retirement and pension schemes by mutual agreement. In one case, the CFA found that "Giving by law a special incentive encouraging one of the parties to denounce/cancel collective agreements by which pension funds were set up constitutes interference with the free and voluntary nature of collective bargaining. Moreover, the Committee considers that after the collective agreements by which pension funds were set up were denounced by one of the parties, it pertained to the parties themselves to determine whether and under which terms and conditions the funds would be dissolved and what would become of their assets. Nothing in Convention No. 98 enables the Government to step in and unilaterally determine these issues, much less to unilaterally determine that the assets of a private pension fund, established by collective agreement, would be appropriated and automatically transferred to a public pension scheme. These measures are contrary to Article 3 of Convention No. 87 and Article 4 of Convention No. 98. The CFA has also found that "The bargaining partners are best equipped to weigh the justification and determine the modalities (and, as far as employers are concerned, the financial practicability) of negotiated compulsory retirement clauses before the legal retirement age, be it by reason of the difficult nature of the job, or for health and safety reasons."

The level of access to courtrooms, tribunals and related facilities can be severely reduced with the replacement of physical procedures by online tools, due to either the lack of access to these technological improvements by elderly persons or (and) lack of digital skills. The ILO has recently published a comparative study on the impact of the COVID-19 pandemic on labour dispute resolution institutions, which focuses on the use of online services to access justice. The study found that rapid digitalization of judicial and non-judicial services requires a more comprehensive plan to combat the digital exclusion of the elderly. Although online tools facilitate the use of the services that enable access to justice, they may also trigger potential risks that a digitalised world entails for older people. Labour institutions should also simultaneously maintain specific non-digital services to guarantee the participation and access by elderly persons who do not hold sufficient digital skills.

The overall results of the Survey about the impact of COVID-19 on labour dispute resolution institutions showed that digitalization of procedures and online applications may have helped to streamline procedures in these institutions, but different constraints must be addressed to guarantee full accessibility to parties involved in both rural and urban areas, particularly for those in a situation of vulnerability or risk, like elderly. This will very much depend on the level of technological development of each national context. Data showed also that technological improvements were applied unevenly across the regions and in many countries were reduced due to limitations on the level of public investment and lack of infrastructure.

In addition to international labour standards, over 45 countries around the world have legislation, including constitutional protections and specific national legislation to address age discrimination in the labour market. Such measures create a rights-based approach that can allow older workers to remain in productively working in a manner to meet their individual capabilities.

In accordance with its mandate to promote social justice, employment and decent work, the ILO has been protecting and promoting the right to work and access to the labour market for older workers since its creation in 1919. The ILO [Centenary Declaration on the Future of Work, 2019](#) and the [2022 Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient](#), take into account the profound transformations of the world of work and the fact that the COVID-19 pandemic has affected older workers disproportionately. They call on the ILO to promote guidance, training and employment services that provide older workers with the facilities, advice and assistance they may need in order to expand their choices, optimize their opportunities to work in good-quality, productive and healthy conditions until their retirement, and enable active ageing.

Following this logic of a human-centred approach and taking into account ILS, employment policies and labour market policies need to become age sensitive and not focus on young people as a particularly vulnerable age group alone. The same holds true for macroeconomic policies as well as sectoral policies, both of which are usually old-age blind. However, with ageing societies more has been done to take into account the impact of policies on older people and the potential such policies have to include and focus on older people. (See also Resolution and conclusions on the third recurrent discussion on employment, ILC 2022).

Ageism (negative view of age-related decline in ability) and age discrimination in employment (e.g., hiring, promotion, retraining, firing, and mandatory retirement) can start from 40 years of age. Measures that can help these groups of workers to be productively employed must recognise the “capability” of older workers to address what they value doing. For older workers in the labour market this means policy or regulatory measures to allow access to employment, employment protection (against age-based dismissal), workplace age discrimination prevention measures, access to legal remedies, workplace policies that establish rights and responsibilities workers and employers. These remain issues in many parts of the world. (Naj Ghosheh, ILO (2008), [Age discrimination and older workers: Theory and legislation in comparative context](#) and Eurofound (2021) [Working conditions and sustainable work: An analysis using the job quality framework](#) Challenges and prospects in the EU series, Publications Office of the European Union, Luxembourg.)

Human right to social security

As a standard-setting agency, the ILO has adopted numerous Conventions and Recommendations relevant to the right to social security and social protection of older persons. In fact, the normative body of standards developed by the tripartite constituents of the ILO provide concrete guidance for the realisation of the human right of older persons to social security and an adequate standard of living to support their health and well-being, including medical care and necessary social services, are laid down in the major international human rights instruments, 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.

Of this body of international social security instruments, the 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), 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, regarding old age pensions, Conventions Nos 102 and 128 and Recommendation No. 131 make provision 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. More particularly, Conventions Nos 102 and 128 envisage the provision of income security to people who have reached pensionable age through earnings-related contributory pensions (guaranteeing 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 publications can be useful:

- ▶ ILO (2021) Building social protection systems: International standards and human rights instruments. Geneva: International Labour Office. Available at: <https://www.social-protection.org/gimi/ShowRessource.action?id=54434>
- ▶ ILO. 2021. 'Building the Future of Social Protection for a Human-Centred World of Work'. ILO. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_780953.pdf.

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 (2021) World Social Protection Report 2020-22: Social protection at the crossroads – in pursuit of a better future. Geneva: International Labour Office. Available at: <https://www.ilo.org/global/research/global-reports/world-social-security-report/2020-22/lang-en/index.htm>
- ▶ Tessier, Lou, Nathalie De Wulf, and Yuta Momose. (2022) Long-term care in the context of population ageing: a rights-based approach to universal coverage. Geneva: ILO and ISSA. Available at: https://www.ilo.org/global/publications/working-papers/WCMS_858784/lang-en/index.htm
- ▶ Tessier, Lou, Nathalie De Wulf, and Yuta Momose. 2022. 'Long-Term Care in the Context of Population Ageing: What Role for Social Protection Policies?' *International Social Security Review* 75 (3-4): 19-45. <https://doi.org/10.1111/issr.12306>.
- ▶ ILO, UNICEF, UNPRPD, HelpAge International, ADB (2021) [Social protection and older persons with disabilities](https://www.social-protection.org/gimi/RessourcePDF.action?id=57599). Available at: <https://www.social-protection.org/gimi/RessourcePDF.action?id=57599>
- ▶ 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 benefits in particular in the context of the future of work and informal employment, consultation can be made of:

- ▶ ILO (2021) Extending social security to workers in the informal economy: Lessons from international experience. Geneva: International Labour Office. Available at: <https://www.social-protection.org/gimi/RessourcePDF.action?id=55728>
- ▶ 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 (2021) World Social Protection Report 2020-22: Social protection at the crossroads – in pursuit of a better future. Geneva: International Labour Office. Available at: <https://www.ilo.org/global/research/global-reports/world-social-security-report/2020-22/lang--en/index.htm>
- ▶ 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
- ▶ Addati, Laura, Umberto Cattaneo, and Emanuela Pozzan (2022) 'Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work'. Report. Geneva: International Labour Organisation. http://www.ilo.org/global/topics/care-economy/WCMS_838653/lang--en/index.htm.
- ▶ 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>.

Specific considerations on migrant workers

ILO research on the interlinkage between aging and international migration: ILO research has addressed “Ageing in diverse societies” (see Chapter 8 of The future of diversity by Ruxandra Oana Ciobanu), bringing together the topics of international migration and population aging. The research highlights differences among older persons according to types of migration (permanent, temporary, return, transnationalism, step-by-step and multiple migrations) but also according to age groups (the young old, the old, and the oldest old). Important findings include that: older migrants enjoy different rights based on their immigration status; and they may have fragmented labour market participations between one, two or more countries with ensuing pension issues. There are implications of ever more diverse groups of older persons for the organization and provision of old-age services. “More attention needs to be paid to

systematically study the diversity of older migrants and its repercussions both for the meso level: neighbourhoods and associations, and for the macro level, such as the organization of care provision.”

ILO Global estimates on migrant workers: According to the most recent ILO global estimates on international migrant workers, there were 169 million migrant workers in the world in 2019. Among those, there were 6 million older workers (65 and older), including 2.4 million women. Older workers 12.4 per cent of the working age migrant population. The share of older migrant workers reduced from 5.2 per cent to 3.6 per cent from 2017 to 2019 and was more pronounced for older women migrant workers.

Social protection (old-age, invalidity and survivors benefits) – From ILO Guide on extending social protection to migrant workers and refugees¹⁵

Multilateral and bilateral social security agreements: ILO Conventions and Recommendations recognize and address the specific disadvantages faced by migrant workers in accessing social security and call for increased social security coordination between countries through bilateral and multilateral agreements that provide for equality of treatment with the nationals of the host country and appropriate arrangements for the maintenance of migrants’ acquired rights and rights in the course of acquisition. Old-age, disability and survivors’ benefits are particularly relevant for older workers, including migrant workers. A positive development is that almost 90 percent of the social security bilateral agreements provide such benefits while less than 50 per cent include other branches (see ILO Guide on extending social protection, graph on page 74, and for specific examples of multilateral or bilateral social security agreements see pages 75-84)).

Gender concerns, migration, and old-age: Informality limits workers’ ability to meet the qualifying conditions for social insurance schemes. This situation leaves women particularly vulnerable, especially in old age (see Box 8.3 below). Additionally, women migrant workers face compounded layers of discrimination. In the absence of a social protection floor, women are often left without old-age pensions, unemployment benefits and maternity protection.

“Box 8.3: Women in old-age poverty” (page 213). “ Women in old age tend to face a significantly higher risk of poverty and/or social exclusion than men. This inequality is characteristic of both the formal and the informal economy.

Women who have worked in the formal economy and have contributed to a pension scheme have a lower average pension income than men, often substantially so. These gaps in pension income reflect the gender gaps in remuneration, working hours and the duration of working life. Differences in wages may be rooted in the underlying variation of education and skill levels and in gender discrimination. In addition, the statutory pension age may be lower for women than for men, resulting in shorter contribution periods and, as a result, lower pension benefits. An additional hurdle that migrant women may face is the absence of a social security agreement ensuring the portability of pension benefits across borders, or of unilateral measures authorizing the exportability of acquired pension benefits.

The risk of old-age poverty is higher in the informal than in the formal economy. As women, and especially migrant women, are overrepresented in this sector and as the informal economy is characterized by a lack of social protection, they largely depend on the provision of social assistance although even these provisions are lacking or limited in many countries. Thus, in order to survive, women are forced to work for as long as they are physically able. However, the low wages paid in the informal economy, the lack of a social pension and their limited savings forces many of them into poverty in their old age. For women migrant workers who return to spend the rest of their days in their countries of origin after many years of work in the informal economy, an SPF is essential”.

The ILO Guide on extending social protection¹⁶ further highlights that in countries of origin, the absence of social protection, and particularly of child allowances, old-age pensions and affordable healthcare, are

¹⁵ ILO, ISSA, and ITCILO. 2021. ‘Extending Social Protection to Migrant Workers, Refugees and Their Families: A Guide for Policymakers and Practitioners’. Geneva: International Labour Organisation. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_826684.pdf.

¹⁶ ILO. 2021. ‘Extending Social Security Coverage to Workers in the Informal Economy: Lessons from International Experience (Good Practices Guidebook)’. <https://www.social-protection.org/gimi/RessourcePDF.action?id=55728>.

essential factors in women's decision to migrate and to provide for their family members who remain in the country of origin (Torada Máñez, Lexartza Artza and Martínez Franzoni 2012). (page 214)

Scope of the rights

2. Please provide references to existing national legal standards relating to older persons' economic security on normative elements such as:

a) right to social security; including regular adjustment of benefits with changes in living costs;

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 exclusion¹⁷
- ▶ 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.
- ▶ 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 schemes¹⁸
- ▶ 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, 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;

¹⁷ ILO (2019), para. 542

¹⁸ ILO (2019), para. 545

- ▶ 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.
- ▶ In addition to pensions, access to health care including long-term care is also essential – see responses under focus area 1.

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 services¹⁹. 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 security²⁰.
- ▶ 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 context²¹.
- ▶ 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).

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:

¹⁹ ILO (2019), para. 550

²⁰ ILO (2019), para. 560

²¹ ILO (2019), para. 559

- ▶ **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”.²² 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 obligations²³. 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 concerned²⁴.
- ▶ 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.

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

²² 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 an ILO issue brief : ILO, 2019. [Universal Social Protection: Key concepts and international framework](#), Social Protection for All Issue Brief. International Labour Office, Geneva.

²³ 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

²⁴ ILO (2019), para. 514

and to take all the necessary measures to progressively establish basic social security guarantees for all²⁵. 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;

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 level²⁶;
- ▶ 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 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 standards²⁷;
- ▶ 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;

See also the specific considerations on migrant workers under (1).

b) right to adequate standard of living, including housing, clothing, food and water, among others;

The right to an adequate standard of living for older persons is closely related to the right to social security – see the response under (a). See also the specific considerations on migrant workers under (1).

²⁵ ILO (2019) para. 524-541

²⁶ ILO (2019) para. 100

²⁷ 2011 General Survey, paras 550–558

c) right to work; and whether a national minimum wage or any alternative mechanism is in place to ensure an adequate standard of living, and whether a system of indexation and regular adjustment exists;

The right to work is closely connected to the right to social security, and the ILO's concept of Decent Work includes social protection as one of its four pillars (broadly understood as both labour protection and social security) – see also responses under (a). See also the specific considerations on migrant workers under (1).

90% of ILO Member States have minimum wage systems in place. National legislations do not have special provisions for older people. Minimum wages have been increasing over the last 10 years, but not enough to compensate, especially for the recent high inflation. (<https://www.ilo.org/digitalguides/en-gb/story/globalwagereport2022-23#chapters>). As suggested by ILO members, the ILO will in the future investigate living wages and analyze the existing systems. This will include the analysis of whether a living wage should be different depending on age.

d) prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to economic security;

As far as the right to social security is concerned, see responses under (a).

See also the specific considerations on migrant workers under (1) and on ILO's framework (1).

e) the connections between relevant economic, social and cultural rights with the right to freedom of expression, including freedom to seek, receive and impart information; and rights to peaceful assembly and freedom of association;

As far as the right to social security is concerned, see responses under (a).

See also the specific considerations on migrant workers under (1) and ILO's framework (1).

f) active, free and meaningful participation of older persons and their representative organizations in all matters related to ensuring their economic security, including in political processes;

As far as the right to social security is concerned, see responses under (a).

See also the specific considerations on migrant workers under (1) and ILO's framework.

g) access to prompt remedies and redress when older persons' above mentioned rights are violated.

As far as the right to social security is concerned,, see responses under (a).

See also the specific considerations on migrant workers under (1) and ILO's framework.

State obligations

3. What measures and special considerations should be undertaken by the State to respect, protect and fulfil the above-mentioned rights to ensure older persons' economic security?

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.²⁸

²⁸ In this context, reference is made in particular to the joint UN web platform on social protection and human rights : www.socialprotection-humanrights.org.

- ▶ 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 system²⁹.
- ▶ 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.

Specific considerations for developing the normative content of the right of older persons to social protection and social security:

- ▶ 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 CEACR³⁰.
- ▶ 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 conditions.
- ▶ 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

²⁹ ILO (2019), para. 86-87

³⁰ ILO (2019), para. 124

over time, contributes to the predictability and sustainability of the social security system and the accountability of the institutions responsible for its governance, and acts as a safeguard against arbitrary governance³¹.

- ▶ 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.

Considerations on 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 pay 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 authorities³²

See also the specific considerations on migrant workers under (1).

Implementation

4. What are the best practices and main challenges faced by your country in the adoption and implementation of the above-mentioned normative framework to ensure older persons' economic security?

We take that this question is addressed more to national governments. We also refer to the ILO World Social Protection Report 2020-22 for relevant experiences.

Guiding questions for the thirteenth session

Focus area 1: Contribution of older persons to sustainable development

One of the preconditions for an active contribution of older persons to sustainable development is that they dispose of an adequate standard of living and the realization of their right to social security, including income security and access to quality health care including long-term care. For this reason, we refer to the elements provided above under focus areas 1 and 2 for the twelfth session.

³¹ ILO (2019), para. 173

³² Convention No. 102, Article 72, Convention NO. 128, Article 36

Older persons contribute to sustainable economic and social development notably by participating in the labour market and sharing their extensive work experience but also, once in retirement, provided that they benefit from an adequate income security thanks to old age pensions, through their ability to engage in community services or within their families to less marketable activities that are nonetheless of significant importance for sustainable development. From that perspective, the age at which national legislations authorize people to go on retirement should be established in such a way as to allow older workers to make the most of their capacity to contribute to their societies' sustainable development, duly taking into account their actual working ability in older age and allowing them to progressively plan their transitions out of the labour market. It is therefore important that retirement age is not established too high without taking into account the difficulty older persons may face to remain in the labour market above a certain age. ILO social security standards establish the age survival beyond which should entitle to an old age pension at 65 years, authorizing this age to be increased with due regard to the working ability of older persons (Convention No.102 on Social Security (Minimum Standards)) or with due regard to demographic, economic and social criteria (which need to be demonstrated statistically) (C128 on Invalidity, Old-age and Survivors' Benefits).

It is also important that age be recognized as a forbidden ground for discriminating against older persons in the labour market. By facilitating the transition into retirement (including through partial retirement pensions), social protection systems can significantly facilitate the transmission of skills and know how towards younger workers towards the end of working lives thus contributing to numerous sustainable development objectives.

Focus area 2: Social Inclusion

One of the preconditions for the social inclusion of older persons is that they dispose of an adequate standard of living and the realization of their right to social security, including income security and access to quality health care including long-term care. For this reason, we refer to the elements provided above under focus areas 1 and 2 for the twelfth session including the following elements:

- ▶ Scope
 - ▶ Autonomy and independence: see above under focus areas 1 and 2
 - ▶ Long-term care and palliative care: see above under focus area 1
 - ▶ Social protection and social security: see above under focus areas 1 and 2
 - ▶ Education, training, lifelong learning and capacity building
 - ▶ Right to work and access to the labour market
 - ▶ Economic security: see above under focus area 2
 - ▶ Accessibility, infrastructure and habitat (transport, housing and access): see above under focus area 2
- ▶ Guiding questions
 - ▶ What are the legal provisions, policy frameworks and/or measures in your country that explicitly focus on older persons who are marginalized on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status?
 - ▶ Specific considerations on migrant workers: see above under focus area 2 of the 12th session
 - ▶ What are the legal provisions, policy frameworks and/or measures in your country that explicitly focus on older persons who are marginalized on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status?

- ▶ See considerations on non-discrimination, substantive equality, and participation under focus areas 1 and 2 of the 12th session
- ▶ What legal age limits exist in your country that prevent the full and equal participation of older persons in societies in areas such as employment, education, healthcare, financial goods and services, or others?
 - ▶ See considerations on non-discrimination, substantive equality, and participation under focus areas 1 and 2 of the 12th session
- ▶ What measures are in place, if any, to ensure that older persons in institutions segregated from their communities -such as institutional care systems or prisons- can continue participating in their society?
 - ▶ See considerations on non-discrimination, substantive equality, and participation under focus areas 1 and 2 of the 12th session
- ▶ States have an obligation to use maximum available resources to progressively achieve the full realization of economic, social and cultural rights. What is the share of national public expenditure budget targeted to older persons as a distinct group?
 - ▶ On social protection expenditure, see the data provided in the ILO World Social Protection Report 2020-22.