

Right to work and access to the labor market

Definition

1. How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?

Such particular definition is not available in the national legislation of Nepal except the rights to employment in the article 33 and right to labour in article of 34 in the Constitution of Nepal as fundamental rights.

Considering gap in relevant existing national legislation, regional and international legal frameworks should define the right to work based on their expertise, knowledge in government and private sectors. If we can define more knowledge engagement and few physical engagement based on the physical capacity.

Furthermore it should be defined based on labour market universe, the level of a country's development, the economic cycle, the availability of a social safety net, the efficiency of labour market institutions, educational and health factors, the size of the informal sector, labour law, and others, and also emphasize the employment and labour market implications of ageing addressing the older worker problem.

Scope of the right

2. What are the key normative elements of the right to work and access to the labor market for older persons? Please provide references to existing standards on elements such as:
 - a. Prohibition of all forms of discrimination against older persons on the based on the age, sex, intersectionality, poverty and other grounds, in all matters related to employment.
 - b. Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.
 - c. arrangement of hygiene accommodation to older persons in the workplace.
 - d. Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.
 - e. Access to flexible or gradual retirement schemes and flexible working practices for older person workers.
 - f. Promotion of older persons' self-employment and entrepreneurship.
 - g. Decent, favorable, fair, and safe working conditions when undertaking formal, informal or unremunerated work.
 - h. Effective remedies and redress mechanism when older persons' right to work and access to the labor market is unreasonably denied or violations

The key normative elements of the right to work and access to the labor market for older persons

- access to employment based on their knowledge and skills
- employment protection

- the legislation that encourages organizations to develop workplace or organizational policies that address against age discrimination
- Amendments of age discriminatory legislation

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labor market for older persons, regarding the normative elements as provided above?

States have to fulfill legal obligation make accessible and available the services fulfil the right to work and access including the right to social security, and ensure that older can realize their rights without discrimination. Referring the General comment No. 18 – OHCHR. State must have specialized services to assist and support individuals in order to enable them to identify and find available employment; and the labour market must be open to everyone under the jurisdiction of States parties.

Special considerations

4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?

Old-age, invalidity, survivors', sickness, unemployment, and family benefits, as well as medical care — and an increasingly should be considered in developing the normative content of the right of older persons to work and access to labour market. The measures taken includes reduced coverage; longer periods of contribution, employment, and residency; narrowing the definition of contingency; reducing the period for which a benefit is payable; reducing the level of benefit; and increasing cost-sharing for medical expenses. Respect for older people's rights benefits society as a whole. Respect for older people's rights benefits society as a whole. Older people are highly vulnerable to abuse, deprivation and exclusion. Violations of the rights of older people lead to exclusion, poverty, and discrimination of older people. ... Better protection of the rights of older people will allow societies to better capitalise on the potential that older people represent. Such areas should be considered in developing the normative content of the right of older persons to work and access to labour market.

5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labour market for older persons?

Non-state such as private sector have a role in governance in advancing and lobbying for socio-political to work and access the labour market for older persons also play a role in non-traditional governance. Their responsibilities has gone hand in hand with the development of international norms, institutions and procedures for a well-functioning right to work and access the labour market for older persons their contributions and play critical responsibilities and

shall be involved in the drafting of legislation and setting norms their initiatives in standard-setting have been very significant.

Implementation

6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to work and access to the labor market for older persons?

Negative ageist attitudes towards old age and older people and other forms of prejudice and discriminatory behaviour, are challenges faced in Nepal. To deal better with the emerging issue, many developed nations have increased retirement age to keep their citizens active and contribute to their national economy. However, no such policies are in place in Nepal; people beyond retirement age or during old age are not legally allowed to remain active. Outdated stereotype, unconscious biasness and age discrimination are preventing capable elderly to go through retain, re-train and recruit process Management of social security allowance, collective health insurance and senior citizen welfare fund, establishment and operation of care centre or day service centre are the best practices. Furthermore, National Policies Addressing the Need of Elderly in Nepal includes Constitutional provision, Five year Periodic Plan, the Civil Code 2017, Senior Citizen Policy 2006, the National Plan of Action, Senior Citizen Act 2006 and Senior Citizen Regulation 2008 and Security Programme and Activities.

Access justice

Definition

1. What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

Senior Citizens Act, 2006 Senior Citizen" means a citizen of Nepal having completed the age of Sixty years while Article 41 of the Constitution defines the right of senior citizens to employment, education and public assistance. It also ensures that the state must uphold these rights in cases of disability, old age or sickness.

Scope of the right

2. What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements:
 - a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;
 - b) Elimination of the influence of ageist stereotypes at any stage of judicial or non-judicial proceedings, including the award of damages or compensation;
 - c) Access to timely legal proceedings, especially in situations of immediacy;
 - d) Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons;

- e) Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others ;
- f) Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners;
- g) Access to reasonable accommodation in all legal and administrative proceedings at any stage to facilitate older persons' effective role as direct or indirect participants in justice proceedings;

- h) Adequate and appropriate training to all those working in the administration of justice and law enforcement, including the judiciary, police and prison staff, on the rights of older persons; Accommodation of the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community;
- i) Equal access of older prisoners to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population; and
- j) Access to prompt remedies and redress when older persons' right to access justice is denied.

Access, Independence, participation, care, self-fulfillment, dignity are the key normative elements of the right of older persons to access justice on an equal basis with others. The predominant focus of policy measures, by their very nature, is on mitigating these losses or shortfalls, and they are often designed only for those individuals and sectors that rely on the State for subsistence. Only in rare cases is government action focused on offering the highest possible living standards for older persons based simply on their identity as members of society and on their legitimate aspirations as citizens.

Such references to existing standards in Nepal includes Senior Citizen Medical Treatment Program; Institutional support grant is made available to old care centres, day care centres for institutional strengthening and operation; Geriatric care management trainings for organizations and individuals working in the field of geriatric care; policy and counselling is done through; High Level Welfare Committee for Senior Citizens and District Welfare Committee for Senior Citizens; establishment of Welfare Fund for Senior Citizens; Initiation of activities to implement Senior Citizen Policy and working strategy; Record updating of senior citizens for social security allowances.

https://extranet.who.int/countryplanningcycles/sites/default/files/planning_cycle_repository/nepal/nepal_national_action_plan_for_senior_citizens_-_2005.pdf

State obligations

3. What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the right?

The main mechanisms or measures necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the rights includes: Older Adults and Access to the Law, Assessing the Access Mechanisms Available to Older Adults including Civil Litigation, Criminal Justice System, Administrative Tribunals, Administrative Complaint Mechanisms, Statutory Investigative Agencies, Advocacy Institutions, Mandatory Disclosure and Rights Advice, Self-Regulation, Internal Institutional Mechanisms, Access to information, Elder Abuse Response Team, Advocacy Mechanisms and Oversight and Monitoring Mechanisms.

Special considerations

4. What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?

The rights to earn, income, to social security, and access to resources access to information, access to resources, access to the judicial system, access to justice, autonomy and independence care, designing mechanisms that take older adults into account, alternative dispute resolution mechanisms, restorative justice circles are main issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations. Responsibilities of non-State actors includes access and influence in national legal and policy negotiations policy negotiations.

Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons?

Main challenges:

- Lack of Effective implementation of existing national legal framework,
- lack of institutional structure like department, though Nepal have Ministry of Women, Children and Senior Citizens to respond policy level dialogue and intervention
- Lack of awareness to local bodies to respond the complaints/grievances, formulate the local policy and programmes under Local Governance Operation Act 2018
- Lack of comprehensive social protection framework,
- National legislation mainly focused on the welfare approach rather than protectionist and justice framework
- Absence of national legislation and provision on access to justice of the older persons
- Need to enact or amendment the laws relating to the investigation, prosecution and adjudication process with prompt implementation the verdict of court through fast track manner