

ILO contribution

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Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Right to work and access to the labour market of older persons

1. Definition

- Definition to reflect that ‘older workers’ are not a homogeneous group (differences between individuals of the same age in terms of functional capacities, abilities and skills, work experience/expertise, ability to be consulted and to deliberate, etc.).
- The notion of ‘older workers’ varies based on countries’ demographic profiles and life expectancy.
- Despite the above, the category of ‘older workers’ needs to be defined at the international level for statistical and measurement purposes.

2. Scope of the right

Key normative elements of the right to work:

- Reminder that international labour standards (ILS) apply to all workers, irrespective of age.
- ILO Convention on Discrimination in Employment and Occupation of 1958 (No. 111) does not explicitly include ‘age’ as a ground of discrimination, but it allows member States to add other grounds (Art. 1(b)).
- ILO Older Workers Recommendation, 1980 (No. 162) provides specific guidance for workers who are liable to encounter difficulties in employment and occupation because of advancement in age. It specifically provides that “older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with other workers” in a number of areas.
- ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No.168) specifically provides that “Each Member shall ensure equality of treatment for all persons protected, without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, nationality, ethnic or social origin, disability or age.”, adding a new ground based on which discrimination is explicitly prohibited as compared to those listed by ILO Convention No.111. (see art.6 of C168)
- Additional item to be included: The promotion of social dialogue and collective bargaining at all levels on issues related to older workers in the world of work.

Point a). 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 employment

- Suggestion to refer to “discrimination, violence and harassment” instead of discrimination only.
- Using the expression “in the world of work” would have a broader scope than “all matters related to employment” which could imply that only formal employment relationships are targeted and it would not include unemployed and those inactive.
- Explicit reference to the need for special attention to the situation of female older workers.
- Explicit reference to the need of older people with multiple disadvantages.
- Explicit reference to older people in fragile settings.
- Explicit reference to protected labour market transitions for older people (so that for example people wanting to move into a new job can do so, as old people are often struck in a job as they are scared to not find a new one).

Point e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development

- Access to general education should be added
- It would be important to mention that a life course approach needs to be taken whereby skills development and support services need to be given at any point in time as continuous interruptions lead to difficult situations at older age. People who experienced interruptions need to be provided with special protection and service measures.

Point f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.

- Suggestion to replace “practices” with “conditions” for broader scope & legal certainty.
- Comprehensive guidance in this respect is provided by ILO R162. Pursuant to C128, If the prescribed retirement age is 65 years or higher, the age shall be lowered 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.

Point h): Favorable, fair, and safe working conditions when undertaking formal, informal or unenumerated work.

- Suggestion to refer to the wording of ILS, in particular ILO Conventions No. 155 and 187, especially the notion of access to “safe and healthy working environments” for older workers.
- We assume it is not “unenumerated” but “unremunerated”
- “Favorable” risks that it would bring costs to other age groups that will not get the support, which in turn is discriminating against those, therefore better to drop the term.

Point i) Access to prompt remedies and redress when older persons’ right to work and access to the labor market is denied.

- Not only refer to their “right to work” but also to their “rights at work” i.e. their labour rights are denied or violated.
- Refer to the notion of “Access to labour justice” for older workers could be explicitly added here.

The point could read as follows: i) Access to labour justice, including prompt remedies and redress, when older persons’ rights at work and access to the labour market are denied or violated.

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?

- Mainstreaming older age in comprehensive employment policies and social protection policies
- Taking life-course approaches

4. Special considerations – 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?

Suggestion to include the following additional examples in the question under point 4:

- Relevant occupational safety and health policies;
- The promotion of social dialogue and collective bargaining on issues related to older workers in the world of work; and
- Adequate social protection frameworks including notably the following:
 - Ensure that, in a framework allowing for a gradual transition from working life to freedom of activity, retirement is voluntary;
 - Make the age qualifying for an old-age pension flexible.
 - Establish special benefits in partial or full compensation for the reduction in remuneration of older persons working a reduced number of working hours.
 - Older workers who are fit for work should be able to defer their claim to an old-age benefit beyond the age normally qualifying workers for such a benefit.

Remark: When workers are protected and regularized, they are no longer informal. So special consideration needs to be given to formalization of older workers in the informal economy

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?

- Explicit reference to workers' and employers' organizations as well as to the rights at work (not only to the right to work). The point would then read as follows: "How should the responsibilities of employers, and employers' organizations, as well as other non-State parties, be defined in the context of the rights at work and access to the labour market for older persons?"

Access to justice

1. **Definition – 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?**

Not sure any country has a proper definition of such right. An alternative would be to ask whether, and how, the notions of “access to justice” and of “equality before the law” are defined at the national level, and the extent to which they explicitly refer to older persons.

R202 on Social Protection Floors establishes that persons protected by social protection systems need to have access to efficient and accessible complaint and appeal procedures, including older workers and retired persons.

2. **Scope of the right – 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:**

The list of items under this question is a bit confusing as it mixes procedural and normative elements of access to justice. Suggestion to slightly restructure for purposed of clarity.

In accordance with R202, impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks.

3. State obligations

Suggestion to include as example here, the need for States to address the lack of access to digital tools and the development of digital skills by elderly persons to access dispute resolution institutions. An elderly-friendly design of these tools must be ensured.

More generally, the issue would be the need to enhance digital literacy and reduce digital skills gaps by providing training to safely navigate digital environments.

ILO social security Conventions and Recommendations are grounded on the core principle that the State assumes the general responsibility for the proper administration of social security systems and the due provision of benefits, including old age benefits and any other social security benefits meant to support the employment of older persons or their progressive transition into retirement (see C102 art. 71 and 72 and R202 para 3)

4. Special considerations

A couple of examples could be explicitly included under point 4 (as is the case for the “Special considerations” related to right to work (above)).

In particular, the following two examples could be explicitly added under point 4 :

- **Access to justice for older persons in the world of work (Access to *labour* justice)**

- Technologies & Access to justice for older persons

The question of older persons/workers and digital training requires specific attention. 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 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 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.

R202 explicitly enumerates “non-discrimination, gender equality and responsiveness to special needs” as a core principle governing the design and implementation of social protection system. In that context, the special needs of older men, but especially women, are acknowledged by way of series of measures aimed at ensuring equality of treatment in how the human right to social security is guaranteed.