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Associação de Aposentados Pensionistas e Reformados

Guiding questions for the twelfth session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Focus area 1: Contribution of older persons to sustainable development

The Scope:

Older persons have the right to contribute to sustainable development. The right to participate in, and contribute to, development is affirmed in the Declaration on the Right to Development. Article 25 of the International Covenant on Civil and Political Rights recognizes the right to participate in public affairs. Effective and meaningful participation enables the advancement of all human rights. On the other hand, when older persons are denied the ability or opportunity to contribute, or when their contribution is unrecognized or devalued, their dignity is denied. Understanding the contribution of older persons to sustainable development as a right enables States to identify steps that can be taken to uphold their dignity.

Substantive guiding questions:

National Legal and Policy Framework

1. What are the legal provisions, policy frameworks in your country that recognize older persons' right to participate in and contribute to sustainable development?

This could include, but is not limited to:

a) ensuring that relevant human rights (in particular the right to freedom of opinion and expression, the right of access to information, and the rights to freedom of peaceful assembly and of association) are protected and implemented.

b) protecting and enhancing civic space and collaboration with civil society that represents the voices of older persons in sustainable development;

c) good practices to ensure older persons' participation in, and contribution to sustainable development.

We are not aware of any legal provisions, in the Portuguese political framework, that specifically recognize the right of older people to participate and contribute to "sustainable development", particularly those related to the mentioned human rights. In Portugal, support to civil society organizations representing older people – public or other - is scarce. These and these organizations are a few in number and are not often called upon to collaborate in current pressing debates, such as those underlying "sustainable development". Nevertheless, older people play a relevant role in their communities taking on, in many cases, several tasks and responsibilities which are

aligned with SDG priorities, such as promotion of economic activities (e.g., Rui Nabeiro, founder of Delta Cafés, one of the most recognized Portuguese entrepreneurs with regard to good employment practices and social responsibility, recently celebrated his 90th birthday while remaining active in the management of his business group (<https://www.gruponabeiro.com/historia-grupo-nabeiro>), involvement in environmental activities (e.g. <https://www.jornaldenegocios.pt/economia/ambiente/detalhe/avos-de-variados-paises-criam-bosque-no-marao-com-arvores-baptizadas-com-nomes-dos-netos>), fostering reflection on the quality of life of older people in their municipalities (Ex: the Senior Forum, an initiative of the Municipal Assembly of Santa Maria da Feira, has become a local advisory body for the issues of ageing, having retired people as the main promoters (<https://cm-feira.pt/grupo-de-reflex%C3%A3o-s%C3%A9nior-de-santa-maria-f%C3%B3rum-s%C3%A9nior->)). In addition, the number of older people involved in volunteer activities in various areas and those who assume fundamental tasks for their families and/or communities, such as supporting their grandchildren or other dependent people is also very expressive.

In a country like Portugal where the sustainability of a pillar of constitutional rights, such as social security is constantly under discussion, and pensions are still considered by many as a benefit rather than a right of those who have worked all their lives and paid contributions, being their sustainability a matter of concern, I would be pertinent to reflect on the kind of development we mean when talking about sustainable development.

2. What are the challenges faced by older persons for the realization of their right to contribute to sustainable development at national and international levels?

One of the main challenges concerns the failure to include in the design of the SDGs, explicitly and systematically, the demands of demographic ageing, the rights of older people and the concrete circumstances that this stage of the life cycle brings to the lives of individuals, their families and communities and society at large. The failure to problematise social protection systems and their 'sustainability' in increasingly ageing societies, challenging the world and governments to find new ways of ensuring that people have a decent level of income after leaving the labour market, is a good example. Furthermore, older people placed in situations of greater vulnerability (physical, economic, social or others) are at a disadvantage when contributing to the design and development of sustainable development, if conditions that make participation and involvement easier are not assured, such as, for example, physical and/or digital accessibility.

In general terms, we consider that older people are not called upon in an intentional, consistent, and consequent manner to make their contributions in this field, in spite of their life experience and the knowledge they hold in various domains (from agriculture to the reusing materials, to reflecting on the sustainability of social protection systems, among many others).

3. What data, statistics and research are available regarding older persons' contribution to sustainable development?

No concrete data on this issue are available. However, some indicators and regularities would justify a clear expression of ageing issues in the SDGs. (E.g. Ferreira, P. M., Azevedo, A. B., Manso, L. P. (2019). Ageing and the 2030 Agenda for sustainable

development. In Ferrão, J., Delicado, A. (Eds.), *Social Portugal in Change. Sustainable development goals*, pp. 25-35. Lisbon. Institute of Social Sciences of the University of Lisbon, are available at:
(https://repositorio.ul.pt/bitstream/10451/41307/1/ICS_ADelicado_JFerrao_Portugal.pdf).

Equality and non-discrimination

4. What measures are being taken to eliminate ageism, ageist stereotypes, prejudices and behaviors that devalue older persons' contribution to sustainable development?

There are some initiatives, mostly promoted by civil society organisations and by the academia, aiming to enhance the debate on ageism and age discrimination. However, this is still a rather superficial debate. Situations of devaluation or non-acceptance of older people's contributions are very common, as well as paternalistic and disrespectful reactions regarding their contributions to issues encompassed by "sustainable development".

Remedies and Redress

5. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to participate in and contribute to sustainable development?

A specialised section for generic complaints from older people, in the national Ombudsman's Office, is a good experience (<https://www.provedor-jus.pt/linha-do-cidadao-idoso/>), although it is a body without decision-making power whose recommendations to the government may or may not be acted upon. Even so, further initiatives should be undertaken at national and local level to strengthen the participation of older people, promoting physical, digital, legal or other accessibilities to fora where all people have equal opportunities to participate and make their contributions.

Guiding questions for the twelfth session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Focus area 2: Economic security

National legal and policy framework

1. What are the legal provisions and policy frameworks in your country that guarantees the minimum essential level of the enjoyment of economic, social and cultural rights, in particular the right to an adequate standard of living?

A Strategy for the Elderly Protection, established by the Resolution of the Council of Ministers no. 63/2015, framed rights of the utmost importance as a reference for institutional practices, stating that "the elderly have the right to economic security, housing conditions and a family and community life that respect their personal autonomy and avoid isolation or social marginalization". Monitoring tools and protection mechanisms are fragile or even non-existent, both in municipalities and in state bodies

[https://www.pgdlisboa.pt/docpgd/files/1441188745_estrategia_protecao_idoso_25082015.pdf].

In 2005, the Solidarity Supplement for the Elderly was created (Decree Law n° 232/2005 of 29 December 2005) to support those who have a very low income, covering older people living far below the poverty line <https://www.seg-social.pt/complemento-solidario-para-idosos>. However, many eligible people do not apply because of excessive bureaucracy and the obligation to give information on their children's income.

2. How is poverty defined in the national policy framework?

Poverty is defined by a national median income

3. What are challenges faced by older persons living in poverty, including the impact of intersectional discrimination and inequality based on age, gender and other grounds?

Older people living in poverty face major challenges in accessing other fundamental rights such as the right to health, as they are often unable to afford medicines or adequate nutrition. In addition, there are thousands of older people whose housing lacks minimum living conditions. Portugal is one of the European countries with the highest levels of energetic poverty.

(https://ec.europa.eu/eurostat/databrowser/view/ilc_mdcs01/default/table?lang=en), which dramatically affects older people (https://www.rtp.pt/noticias/pais/portugal-entre-os-paises-da-europa-com-mais-pobreza-energetica_n1130343).

Many older people living in poverty also face serious situations of loneliness and isolation. Older women are those who experience the greatest and most serious situations.

4. What data, statistics and research are available regarding older persons living in poverty?

Available data illustrate the seriousness of the poverty phenomenon among older people in Portugal: [PORDATA - Social Protection](#)

Example 1: in 2019, 46.2% of people who had worked for public institutions got pensions below €1,000: 8.1% - up to 250€; 12.9% - 250 – 500€; 13.4% - 500 – 750€; 12.8% - 750 – 1000€.

Example 2 : An increasing number of disability and old-age pensioners have pensions below the national minimum wage - 1,585,083 individuals in 2020; ([PORDATA - Disability and old-age pensioners of the general Social Security scheme with pensions below the national minimum wage \(in Euros\)](#)).

Progressive realization and the use of maximum available resources

5. What steps have been taken to address economic insecurity and poverty in older age and to ensure the right to an adequate standard of living for older persons?

The value of lowest pensions have increased exceptionally and in small amounts. The minimum pension in 2022 is 259.85€ (PORDATA - Minimum monthly amount of pensions of the Public Administration Retirement Fund: retirement, forces, disability and survivor pensions) which is clearly insufficient to lead a decent life in Portugal.

6. What is the impact of macroeconomic policies on economic insecurity and poverty among older persons and vice versa? What policy options are available and/or implemented in order to expand fiscal space and maximize available resources to ensure economic security and the right to an adequate standard of living for older persons?

There are many pious statements of social concern for the elderly which are then forgotten, starting with the budgetary policy under which the Government chooses not to update most pensions, thus worsening the degradation of the standard of living of those who are retired. This has a tremendous impact on the high poverty levels of thousands of taxpayers who remain below the poverty line. If Law 53B/2006 of 29 December remains unchanged, also pensioners with average pensions will be condemned to continued degradation pensions and living conditions. The repeal of that law is an act of basic social justice.

<https://ec.europa.eu/eurostat/documents/2995521/9802432/8-21052019-AP-EN.pdf/7f42181d-d795-4ce1-9dde-ba93fe247166>.

7. What good practices are available in terms of ensuring older persons' economic security, including through a life-course approach?

Demands of associations representing older people have raised awareness of the existing problems. Additionally, there is a helpline for older citizens in the Ombudsman's Office, but its powers are limited. Older people have recently gained representation in some national bodies but without the right to vote. At municipal level, participation in local commissions is possible, but not as a represented group for the political management of resources.

Investment in strong social and labour policies, aimed specifically at the younger population, can enable the building of more solid contributory careers, reducing vulnerability to poverty in old age.

Equality and non-discrimination

8. What measures are being taken to eliminate ageism and discrimination based on age that prevent older persons to access economic and other productive resources, including financial services, land, adequate housing and the right to inheritance?

Legislation to ease access to economic resources is very incipient. Some speeches and political proposals concerning the challenges brought by ageing, some of them poorly disguised prejudice that the increase in the number and relative social weight of older people carries the threat of a social catastrophe, thus promoting the dissemination of ageist stereotypes, are relatively well tolerated. An example is found in the 2019 definition of the Informal Carer Statute, where retired people are excluded from eligibility for a carer's support allowance. (<https://dre.pt/dre/detalhe/lei/100-2019-124500714>).

Guiding questions for the twelfth session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Remedies and redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their economic security and enjoyment of the right to an adequate standard of living?

The concept of municipal ombudsmen to deal with specific claims of older people in areas such as barriers to accessibility in public spaces, housing conditions, etc. might be interesting. A stable universal and general National Health Service (NHS), tending to be free of charge, with continuous qualification and diversification of its human resources, with specific and proximity responses in primary care including geriatrics consultation, thus adapting to the current demands of a healthy ageing population. Increase in the number of facilities and reinforcement of human resources providing national coverage of the Integrated Continuous Care and Palliative Care networks, with the corresponding reinforcement of human resources, is urgent. Valorisation and differentiation of Home Support Service, with no additional financial burden on the elderly, is an essential tool to delay institutionalisation.

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 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?

We are unaware of any laws promoting or aiming to guarantee the right to work and access to the labour market for older people in Portugal. There are, however, legal frameworks that set age limitations for the continuity of people in the labor market, namely for civil servants.

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 basis of age, alone or combined with 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) Provision of reasonable accommodation to older persons in the workplace.**
- d) Affirmative action programs to promote the hiring of older persons.**
- e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.**

- f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.**
- g) Promotion of older persons' self-employment and entrepreneurship.**
- h) Favorable, fair, and safe working conditions when undertaking formal, informal or unenumerated work.**
- i) Access to prompt remedies and redress when older persons' right to work and access to the labor market is denied.**

In Portugal many older people continue to work after retirement, some because they have the interest and desire to do so, but many others because they are faced with very low pensions, which do not guarantee them material conditions, the dignity and quality of life, which are expected after a lifetime of work. Even average pensions have been frozen for more than a decade. Their value has been degrading, not keeping up with the increase in the cost of living. For this reason, and taking into account that the salaries of the Portuguese are still very low, work should be thought of in a

For this reason and considering that the wages of the Portuguese are still very low, work should be thought of in a life-cycle perspective that does not consign a large number of older people to poverty. At this point, a significant portion of this age group keep up with pension values well below the national minimum wage and constitute a significant part of the Portuguese population living below the poverty line, even after social transfers.

A significant increase in the lowest pensions is imperative. Law no. 53 B/2006, of December 29, which has acted more as a brake than as a stimulus for the annual updates of most retirement pensions, must be revised. The removal of the penalty in the calculation of pensions obtained before the age generally set, for all those who have had long contribution careers, due to the "sustainability factor", is urgent, since it has greatly harmed people who, for reasons beyond their control, such as health situations or long-term unemployment, have been forced to leave work earlier.

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?

A serious and committed debate with the various stakeholders is urgently needed, in Portugal, in order to balance the budget of Social Security in the present and in the future. The appropriate response to promote sustainability of pension systems should not be extension of working life, nor increasing contributions of those who work, much less to lower the Single Social Tax (TSU), considered by many as an incentive to investment, but rather to look for new sources of funding for these systems, coming from economic activity. In this sense, we defend, for example, that the reinforcement of Social Security revenues should come from companies with added value and/or turnover above a certain level having, however, little employment. Thus, with decent wages and employment with rights, we can rely on a solid Social Security system with a future.

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?

In Portugal many older people continue to work without any recognition, either because they cannot formally assume that payment to avoid penalties on their retirement pensions, or because they are performing fundamental tasks for their families or communities without being paid or appreciated. This is the case for thousands of people who take care of their grandchildren on a daily basis or who are informal caregivers for relatives or other dependents. Nearly 1.4 million people are informal caregivers in Portugal (Nov 2020 - <https://observador.pt/2020/11/05/perto-de-14-milhoes-de-pessoas-em-portugal-sao-cuidadores-informais/>), mostly women. In 2019 there will be a Statute to support informal caregivers (<https://dre.pt/dre/detalhe/lei/100-2019-124500714>), but it has practically no impact yet for most caregivers, many of them retired people. A large proportion of the people who are cared for by informal caregivers are also older people with dependency, physical or mental illness, or both. In many cases, informal caregivers have lack of support, resources and conditions to care properly. Many informal caregivers are unaware that they can access a status (April 2021 - <https://www.publico.pt/2021/04/19/sociedade/noticia/cuidadores-informais-desconhecem-podem-aceder-estatuto-1959082>).

Moreover, the statute enables a subsidy for carers who are economically disadvantaged, but excludes retired people, making it impossible for them to have recourse to this financial support.

Access to 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?

We are unaware of the existence of a specific concept of rights for older people in access to justice under the Portuguese legal system

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;**

There are no special rights for older people to access justice in Portugal. There are some specificities regarding the fulfilment of prison sentences, provided by the regime of sentence compliance.

Despite the significant increase in the number of older prisoners during the last 12 years (<https://www.publico.pt/2022/01/17/sociedade/reportagem/reclusos-60-anos-quase-triplicam-doze-anos-1991944>), their specific needs are not taken into account. Barriers to their participation in activities within prison are apparent in the unsuitability of activities for older people which do not take into consideration their physical abilities (<https://www.publico.pt/2022/01/17/sociedade/entrevista/populacao-idosa-esquecida-sistema-prisional-nao-problemas-1991187>).

Obligations of the State

3. What mechanisms or measures are needed to ensure the enjoyment and to monitor the application of the right of access to justice by older persons, including the State's obligations to respect, promote, protect and fulfil the right?

Given the situation of extreme vulnerability in which many older people find themselves, particularly those who are more isolated, the creation of a National System for the Promotion of the Rights and Protection of Older Persons (SNPDPPmV), which promotes the rights of older people and the prevention and treatment of situations of poverty, disease and violence, is necessary. This system should have a national coordination, regional coordination and, at municipal scale, local councils. It should have representations from the judiciary, Social Security, the National Health Service, the security forces and social response entities. It is essentially a question of articulating and systematising proximity experiences that have already been developed throughout the national territory. It is also important to ensure that the system has a clear focus on the rights of older people.

It is also crucial to ensure accessibility, namely physical, in facilities that are directly or indirectly related with justice, as well as access to means of defence and rights protection.

Special considerations

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

Implementation

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

The existence of a specialised section for generic complaints of older people, in the national Ombudsman's Office, is a good experience (<https://www.provedor-jus.pt/linha-do-cidadao-idoso/>), although it is a body without decision-making power, whose recommendations made to the government may or may not be acted upon, and therefore may prove to be of little consequence in guaranteeing the right to justice for older people.

Furthermore, in August 2015, the Resolution of the Council of Ministers No. 63/2015 was published, enshrining, for the first time, a Strategy for the Protection of the Elderly, a document of doctrinal nature, framing rights and of great importance as a reference for institutional practices. In it we can read, for example: "The Constitution of the Portuguese Republic also affirms, within the framework of economic, social and cultural rights and duties, the rights of older people, stating in its article 72 that "older people have the right to economic security and housing conditions and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation". Despite this legal normative, the greatest difficulty reveals itself in the submission of practices to the theoretical frameworks designed by the law. The means of surveillance are incipient, and the protection mechanisms are still fragile or even non-existent, at the municipalities or state bodies [Resolution of the Council of Ministers no. 63/2015, of 13 August 2015. (2015). Approves the Strategy for the Protection of the Elderly.

http://www.pgdlisboa.pt/docpgd/files/1441188745_estrategia_protecao_idoso_25082015.pdf].

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