

## Suggestions for amending the Draft General Comment on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/54/R.2)

### Introduction

AGE Platform Europe welcomes the draft General Comment on the Right to just and favourable conditions of work, as proposed at its 54<sup>th</sup> session. AGE Platform, as a representative of over 40 million older people in Europe, believes that just and favourable working conditions are crucial for people to be able to work until retirement age and to enjoy retirement with the highest attainable standards of mental and physical health. Therefore, the General Comment can play a big role in promoting favourable working conditions.

To strengthen the proposed draft and to build on other human rights which are interconnected with the art. 7 of the ICESCR, AGE Platform Europe would like however to propose some amendments to the draft general comment. The amendments are outline below. The main points that could be added to the draft are:

- To take fully into account the right not to be discriminated against in the access to in-job training and life-long learning, as this is key to maintain employability throughout the life-course, be more resilient to indirect discrimination and to fully participate in society throughout the life course.
- To build a stronger link with the right to social security (art. 9 ICESCR and General Comment Nr. 19) which is inherently linked to remuneration, as rights to health insurance, pensions and unemployment benefits are often linked to previous remuneration
- To secure some rights of migrant and unpaid workers to social security, especially pension rights, acquired during their period of work in a host country or during unpaid work such as education of children, even when leaving the host country.

Therefore, AGE Platform Europe would be pleased if the Committee could take into account the following amendments.

### Amendments

#### II. Normative Content

**Article 7(a): Remuneration which provides for all workers, as a minimum, with:**

#### *(v) Remuneration that provides all workers with a decent living for themselves and their families*

20. Closely linked to the notions of fairness and equality, 'remuneration' must also provide a 'decent living' for workers and their families. While fair wages and equal remuneration are determined by reference to the work performed by an individual worker as well as in comparison to other workers, remuneration that provides a decent living must be determined by reference to outside factors such as the cost of living and other prevailing economic and social conditions. Thus, remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including access to adequate food, water and sanitation, housing and clothing. **The notion of remuneration that provides all workers with a decent living should take a life-cycle approach, including sufficient statutory or voluntary contributions to social security or private-sector equivalents that cover risks such as sickness, longevity, unemployment and long-term care needs**

26. In keeping with the broad scope of article 7, the minimum wage should apply systematically, protecting as much as possible the fullest range of workers, including workers in vulnerable situations such as workers with disabilities, domestic workers, migrant workers, agricultural workers as well as workers in the informal sector. The minimum wage might apply generally or differ across sectors, regions, zones and professional categories so long as the wages apply without direct or indirect discrimination and ensure a decent living. In setting minimum wages at sector or industry level, the work performed in sectors predominantly employing women, minorities or foreign workers, should not be undervalued compared to work in sectors predominantly employing men or nationals. **The setting of a minimum wage should be led by a life-cycle approach, regarding not only the financial needs to stay out of poverty in the present, but also to be able to sustain a life without poverty in the case of sickness and in old age.** It is particularly important to ensure that job evaluation methods used to align or adjust sectoral or occupational minimum wage schemes is not inherently discriminatory.

*Justification:*

- Remuneration is the main income of households across the life cycle.
- Remuneration should not only ensure a decent standard of living at the time of the work contract, but that it should be sufficient to cover inherent risks throughout the life-cycle, such as disease, times for maternity and breastfeeding and life beyond the age of retirement. This approach is crucial to ensure the implementation of art. 11 ICESCR on an adequate standard of living throughout the life-course.
- These risks are often covered by social security contributions that are linked to wages, or, where social security contributions do not cover these risks, employers or employees have the possibility to cover it by private insurances or pension institutions.
- This approach is in line with article 11 of the Covenant and the UN Principles on older persons, in particular the principle of 'Independence', which according to the Committee's General Comment No. 6 "includes access to adequate food, water, shelter, clothing and health care. To these basic rights are added the opportunity for remunerated work and access to education and training".
- In General Comment 19 on the right to social protection the Committee states benefits should be adequate in both amount and duration and accessible to all without discrimination.
- The ILO and a number of other UN Organisations have developed a framework for policy design known as the social protection floor, anchored in the rights of everyone to social security and the right to a standard of living adequate for the health and well-being of themselves and their families.<sup>1</sup>
- The Independent Expert on the Question of Human Rights and Extreme Poverty has pointed out the links between different types of social security for older people and poverty risk.<sup>2</sup> The rapporteur noted that social protection comprises both social insurance and social assistance with due consideration to the true cost of living. She noted that contributory systems of social security accentuate gender inequalities, with older women more likely to receive lower pensions and other contributory benefits. This can become a challenge to the realisation of the right to an adequate standard of living.

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<sup>1</sup> ILO, *Social Protection Floor for a Fair and Inclusive Globalisation*, Report of the Advisory Group, 2011. See also the recently adopted ILO R 202, *Recommendation on National Floors for Social Protection*, 2012, particularly para. 5 (a), requiring national social protection floors to comprise "basic income security, at least at a nationally defined minimum, for older persons".

<sup>2</sup> *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, A/HRC/14/31, 31 March 2010*

**Article 7(b): Safe and healthy working conditions**

28. Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work and closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health. States parties should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment and ensuring broad participation in its formulation, implementation and review, in particular of workers and employers and their representative organizations. While full prevention of occupational accidents and diseases might not be possible, the human and other costs of not taking action far outweigh the financial burden on States parties for taking immediate preventative steps that should be increased over time.

**(29 - New paragraph to be inserted after paragraph 28). Occupational health and safety policies should aim to maintain health and employability of all workers across the life-cycle. They should therefore start at a young age and have a focus on prevention of diseases that build up over time, such as musculoskeletal disorders. Mental health is an essential element of occupational health and safety policies; therefore they should encourage the prevention of psycho-social conditions in companies, such as measures focussing on stress management.**

**Justification:**

- Taking a life-cycle approach to the right to health and the obligation to provide safe and healthy working conditions, it cannot be sufficient to merely prevent gross accidents at work. The long-term consequences of working environments and processes should be taken into account, and therefore prevention should start at a very early stage
- In 2011, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health prepared a thematic study on the right to health of older persons (A/HRC/18/37). In this study, the Special Rapporteur called attention to several specific concerns, including the lack of adequate prevention and management of chronic illnesses and disability among older persons.
- General Comment No. 14 of CESCR adds further specificity to the standards by affirming the importance of an integrated approach, combining elements of preventative, curative and rehabilitative health treatment based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity<sup>3</sup>.

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3 CESCR; General Comment no. 6 paras 34 and 35

**Article 7(c): Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence**

(33) [...] [*phrase added to the end of the paragraph*] **Equal opportunities in promotion also mean that on-the-job training programmes, if they exist, have to be non-discriminatory, providing all workers of equal status, regardless of disability, ethnic, national and other minority status, migrant background, gender or sexual orientation, and especially age, with opportunities to improve their competences.**

**Justification:**

- The right to non-discrimination is an absolute right recognised in the ICCPR art. 2. General Comment Number 18 of the CCPR recognises that positive steps have to be taken by states to ensure this right. General Comment number 6 of the CESCR relates to age-based discrimination, noting that while such discrimination is not explicitly covered by art. 2 ICCPR, it can consider that age-based discrimination constitutes discrimination on 'other grounds'.
- There are a number of International Labour Organisation (ILO) recommendations which address the situation of older workers and call on members to take measures to prevent discrimination in employment and occupation. The recommendations underline that older workers should enjoy equality of opportunity and treatment in relation to all aspects of work and conditions of employment in all sectors.<sup>4</sup> On-the-job training and life-long learning programmes are crucial to ensure equality of employees when it comes to restructuring, layoffs or other processes which puts older employees at a higher risk of being discriminated against. Therefore, these should be explicitly mentioned in this paragraph.
- The CESCR has recognised that older persons should have access to suitable education programmes and training throughout their lives in General Comment 6. In General Comment 20, paragraph 29, the CESCR has highlighted the need to address discrimination against unemployed older persons in finding work or accessing professional training or retraining

**Special topics of broad application**

***The right to just and favourable conditions of work for specific groups***

(ii) *Young and older workers:* All workers should be protected against discrimination, including on the basis of age. [...] Older workers should receive fair wages, equal remuneration for work of equal value, and have equal opportunity to promotion, **training and life-long learning opportunities**, based on their experience and know-how. Specific health and safety measures in the work place might be necessary and older workers should benefit from pre-retirement programmes **providing, for example, for a progressive scaling down of working time or providing for flexibility to accommodate family responsibilities**. The cumulative effects of discrimination against women workers through the life cycle may require targeted measures to guarantee fair wages, equal opportunities to promotion and equal pension rights as well as broader measures to combat other inequalities.

**Justification:**

See justification for the amendment to paragraph 33.

(v) *Migrant workers:* These workers, in particular if undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. If they do not speak the national languages they might be less aware of their rights and unable to access grievance mechanisms. Undocumented workers might fear reprisals from employers and eventual expulsion if they seek to complain about unjust and unfavourable conditions at work. Laws, policies and regulations should ensure that migrant workers enjoy treatment no less favourable than national workers in relation to remuneration and conditions

<sup>4</sup> ILO, R131, Invalidation, Old-Age and Survivor's Benefits Recommendation, 1967; R162 Older Workers Recommendation, 1980; and R166 Termination of Employment Recommendation, 1982

of work. **If migrant workers emigrate out of their host country, it should be ensured that social security rights providing for benefits after a certain time, such as pensions, are either portable and withdrawable from abroad or transferrable into their new host country.**

*Justification:*

- The international Convention on the Rights of All Migrant Workers and Members of Their Families (CMW) specifically prohibits discrimination on the basis of age (art. 7). Art. 15 of the CMW ensures migrant worker's right to property. In many cases, entitlements such as pension rights can be considered as property. Additionally, art. 27 of the CMW prohibits discrimination in social security against migrant workers.
- Access to pension rights acquired throughout the career is a necessary requirement to ensure adequate living standards in old age for migrant workers and their families.

(viii) Unpaid workers: Women spend twice as much time as men in unpaid work. Unpaid workers, such as workers in the home or in family enterprises, volunteer workers and unpaid interns have remained beyond the coverage of ILO Conventions and national legislation. Nonetheless, they have a right to just and favourable conditions of work and should be protected by laws, policies and regulations in relation to occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security. **Especially times spent in parental leave or in regulated leaves in order to care for sick or disabled family members should be eligible to acquire social security rights, such as health insurance and pension rights.**

*Justification:*

- In Europe alone, where formal care systems exist, 80% of care work is provided informally, in most of these cases by women.
- Interruption of careers and lack of sufficient contributory periods are a main cause for poverty among older women.
- Care for family members constitutes unpaid work, which should be protected by the right to social security and the right to fair working conditions.

### **III. Obligations**

#### **Specific legal obligations**

61. To help assess the enjoyment of the right, States parties should establish obligatory notification schemes in case of occupational accidents and disease as well as mechanisms to assess systematically the level of the minimum wage, fair wages, and the gender pay gap between men and women within organizations in the public and private sectors, including in high level posts. States parties should also review the impact of laws, policies and regulations at appropriate intervals, in consultation with workers and employers, with a view to updating standards in light of practice. For example, the national policy on occupational safety and health **or life-long learning** should include a built-in periodic review mechanism. States parties should create incentives for extension of protective regimes to sectors in risk; introduce schemes that allow for coverage of informal workers coupled with measures to regularise the informal sector; create adequate dialogue mechanisms to raise pertinent issues; introduce incentives to overcome the gender pay gap, including through initiatives to alleviate the burden of reproductive work on women, for example, by promoting access to goods and services, such as day care facilities and non-transferable parental leave for men.

*Justification:*

See justification of the amendment to paragraph 33.