

## **STRENGTHENING INTERNATIONAL AND REGIONAL FRAMEWORKS TO PROTECT THE HUMAN RIGHTS OF OLDER PERSONS**

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### **I. The role of global and regional human rights standards and systems in the work of PAHO as a regional specialized agency, particularly the impact on the agency's work and programs implemented in the region**

Universal and regional human rights norms and standards and human rights systems have had in PAHO, as regional office of the World Health Organization (WHO) a crucial role, especially in areas related to groups in situations of special vulnerability such as older persons. Just to put this work in context, we have to remember that since 1946 all PAHO Member States recognized in the Constitution of the World Health Organization that:

- “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”
- PAHO Member States, beyond the right to the enjoyment of the highest attainable standards of health, have committed to “advocate for the promotion and protection of the human rights and basic freedoms of older persons” which is a mandate included in PAHO Resolution CSP26.R20 of 2002.
- The role of universal and regional human rights norms and standards in the work of PAHO as a legal framework to reform public health systems related to older persons, was expanded in 2009 when PAHO Member States approved Resolution CD49.R15 and technical document CD49/8 “Plan of Action on the health of older persons, including active and healthy ageing”
- In this plan of action, PAHO Member States, refer specifically to UN and OAS treaties and standards as a unifying and conceptual framework for implementing all the strategic areas, objectives, goals and activities approved by PAHO Member States in this plan of action.
- The universal and regional instruments included by PAHO Member States to implement the plan of action includes: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of persons with disabilities, the UN Principles for Older persons, the American Convention on Human Rights, its additional Protocol in Economic,

Social and Cultural Rights (Protocol of San Salvador), the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, Belem Do Para (violence against women) and the Principles and Good practices on the protection of persons deprived of their liberty in the Americas (which include older persons living in long term care facilities for older persons)

- Particularly how these universal and regional human rights instruments become a conceptual and legal framework with **a positive impact on the agency's work and programs implemented in the region of the Americas?** Analyzing the commitments of PAHO Member States in the Plan of Action for older persons, we see the application of these human rights obligations in the following areas:
  - a) Formulation of policies, plans, laws, programs and regulations on ageing in a manner consistent with those UN/OAS human rights instruments Example: policy of St Kitts and Nevis and national law of Belize);
  - b) Dissemination in multidisciplinary training workshops of these UN/OAS human rights instruments in collaboration with the IACHR and the UN Special (in El Salvador, Argentina, Brazil, St. Kitts and Nevis, Belize, Panama and Uruguay) Rapporteurs (Example: the UN Special Rapporteur on the Right to Health);
  - c) Development of legal frameworks and implementation of mechanisms to protect the health of older persons in long term care services in a manner consistent with the UN/OAS human rights instruments mentioned above (collaboration with the Gov. of Chile);
  - d) Upgrade the competencies of personnel in delivering services to older persons providing training that include clarification of the UN/OAS human rights treaty obligations; and
  - e) Regulate the delivery of care in long term care facilities for older persons with special attention to measures to guarantee their autonomy, care to the terminally ill and chronic patients, avoid pain and providing palliative care that allow the terminally ill to die with DIGNITY in a manner consistent with UN/OAS human rights instruments

## II. **The role of global and regional human rights standards and systems in the work of PAHO as a regional specialized agency, particularly the impact on the agency's work and programs implemented in the region in Resolution CD 50R8**

The application of universal and regional human rights instruments in the context of programs and strategies of PAHO for groups in situation of vulnerability (including older persons) had a tremendous “upgrading” last October when all PAHO Member States approved Resolution CD 50 R8 called “health and human rights”.

It is important to underscore that all PAHO Member States recognized in concept paper, *Health and Human Rights* (Document CD50/12) and in resolution CD50R8 that “Human rights law, as enshrined in international and regional human rights conventions and

standards, offers a unifying conceptual and legal framework for these strategies [which include strategies for older persons], as well as measures by which to evaluate success and clarify the accountability and responsibilities of the different stakeholders involved;”

Recognizing that the human rights instruments of the United Nations and Inter-American systems are useful for the progress of the Member States towards the achievement of the Millennium Development Goals (MDGs) [in the context of older persons], especially those related to eradicating extreme poverty and hunger (MDG 1), reducing child mortality (MDG 4), improving maternal health (MDG 5), and combating HIV/AIDS, malaria and other diseases (MDG 6);

Observing that the Pan American Sanitary Conference and the Directing Council have recommended that the Member States formulate and adopt policies, plans, and legislation in health consistent with the applicable international human rights instruments in the context of...[active and healthy aging (Document CD49/8)]

PAHO Member States have committed then, to use universal and regional human rights instruments in the following programs

(a) strengthen the technical capacity of their health authority to work with the corresponding governmental human rights entities, such as ombudspersons’ offices and human rights secretariats, to evaluate and oversee the implementation of the applicable international human rights instruments related to health [of older persons];

(b) strengthen the technical capacity of the health authority to provide support for the formulation of health policies and plans [on ageing] consistent with the applicable international human rights instruments related to health;

(c) support PAHO’s technical cooperation in the formulation, review and, if necessary, reform of national health plans and legislation [on ageing], incorporating the applicable international human rights instruments, especially those related to the protection of groups in vulnerable situations [such as older persons];

(d) promote and strengthen training programs for health workers [working in long term care facilities for older persons] on the applicable international human rights instruments;

(e) formulate and, if possible, adopt legislative, administrative, educational, and other measures to disseminate the applicable international human rights instruments on protecting the right to the enjoyment of the highest attainable standard of health and other related human rights [of older persons] among the appropriate personnel in the legislative and judicial branches and other governmental authorities;

(f) promote, as appropriate, the dissemination of information among civil society organizations [working for older persons] and other social actors on the applicable international human rights instruments related to health, to address stigmatization, discrimination, and exclusion of groups in vulnerable situations [such as older persons].

An with regard to the collaboratin of PAHO with UN and OAS treaty bodies, resolution CD50 R8 requests the Director, within the financial possibilities of the Organization:

(a) to facilitate PAHO technical cooperation with the human rights committees, organs, and rapporteurships of the United Nations and Inter-American systems;

(b) to train Organization staff so that the technical areas, especially those most closely involved in protecting the health of groups in vulnerable situations [including older persons], gradually incorporate the international human rights instruments related to health into their programs;

(c) to promote and stimulate collaboration and research with academic institutions, the private sector, civil society organizations, and other social actors, when appropriate, to promote and protect human rights, in keeping with the international human rights instruments related to health [of older persons];

(d) to promote the sharing of good practices and successful experiences among the Member States of PAHO so as to prevent the stigmatization, discrimination and exclusion of groups in vulnerable situations [such as older persons].

### III. What gaps exist in the current protection systems at the regional level and suggestions for the format and rights-content of the enhanced protection

PAHO Member States in resolution and technical documents related to older persons (Resolution CSP26.R 20 2002 “health and ageing”, Resolution CD49.R15 PAHO plan of action CD49.R15 and CD50 R8 “Health and human rights”) have referred to several gaps related to the exercise of human rights in long term care facilities...

Gaps: Human Rights and fundamental freedoms in long term care facilities for older persons

- Private and governmental institutions;
- Lack of Private and governmental community based programs;
- Lack of Private and governmental residential programs;
- Older persons deprived of personal liberty in prisons;
- Lack of national policies and laws that regulate the Specific human rights to be protected in those institutions;
- Lack of national policies and laws that establish the Obligations of Governments and concrete measures to be taken in a manner consistent with UN/OAS human rights norms/standards; and

- Lack of specific procedures for registering long term care facilities under national law (Example: in one visit PAHO learned that 1,200 homes had not been registered under national regulations). No monitoring system in place.

Other critical areas to be regulated in long term care facilities for older persons which are being addressed by PAHO in countries following the strategies that I mentioned before, include:

- Prohibitions with regard to limitation of human rights (ICCPR, American Convention and Siracusa Principles);
- The right to a dignified life and personal integrity: protection against seclusion, restraint, malnutrition, sexual and/or financial abuse, physical abuse by health personnel, older persons forced to eat meals they do not like, are locked up or tied to beds or are placed in physical positions that could affect a physical disability or cause wounds, intentionally do not provide older persons with potable water, adequate food or essential goods to take care of their hygiene
- The right to mental integrity: Threatening of older persons with abandoning them, intimidation of older persons with words or gestures and deplorable living conditions in rooms and abandoning older persons who are forced to be in bed
- The right to security of person: Participation in the decision making process in the context of informed consent to treatment without threats, medical/scientific experimentation, right to a periodic review of any decision that refers to lack of legal capacity and/or appointment of a personal representative as a consequence of that incapacity
- The right to equal protection of the law: recognition of older individuals as “persons” before the law, participation in committees within long term care facilities, right to make decisions according to their own preferences in order to guarantee autonomy;
- Freedom of expression: all information about their fundamental rights and mechanisms of protection, freedom to communicate with other persons, to receive uncensored private communications, freedom to communicate with counsels or personal representatives, access to postal and telephone services, newspapers, radio and television; and
- The right to judicial protection and judicial guarantees: Key element in periodic review of appointments of personal representatives, guardianships, admission procedures to residential programs, informed consent procedures in the context of treatments, hearings before review bodies and appeals before Ombudspersons and national courts

