

United Nations General Assembly Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons
Eleventh working session
New York, 6-9 April 2020

Guiding questions for Focus Area:
Right to Work and Access to the Labour Market

COLOMBIA

National Legal and Policy Framework

- 1. What are the legal provisions and policy frameworks in your country that recognize the right to work and access to the labour market by older persons?**

Article 25 of the Colombian Political Constitution states: "Work is a right and a social obligation and it enjoys, in all its forms, the special protection of the State. Everyone has the right to work in decent and fair conditions ..."

Based on this constitutional definition we can affirm that in Colombia there is no age distinction (excluding children) for the right to work. It is a rule that applies to all citizens.

- 2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?**

Based on the legal definition we can affirm that, from the normative point of view, older people shouldn't face challenges on this matter, but it is a notorious fact that there is a general preference in societies for young people in the labor market.

- 3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?**

The "Informal Employment and Social Security Report"¹, prepared by the National Statistics Department (DANE), presents a characterization of the employed population based on the main criteria for measuring informal employment, such as: company size and affiliations to the social security systems. It presents quarterly results for the country, comprising data for 13 large cities and metropolitan areas and 23 other cities.

Availability, Accessibility, Acceptability and Quality

- 4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?**

Access to employment and information about employment opportunities is public and aimed to all citizens. Although there is no provision specifically oriented for the elderly, we can affirm that these types of services are accessible to all.

- 5. What steps have been taken to ensure the availability of specialized services to assist and support older persons to identify and find employment?**

¹ <https://www.dane.gov.co/index.php/estadisticas-por-tema/mercado-laboral/empleo-informal-y-seguridad-social>

Based on the answer to the previous question, there are no exclusive services for the elderly. They access these services like all citizens, on equal terms.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

Practices such as equality, publicity and information for every citizen alike benefit all Colombians.

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

Colombia, as a member of the International Labor Organization (ILO) and a supporter of the 2030 Agenda, is committed to decent work and the SDG 8.

Therefore, we intend to guarantee the rights of workers, without differentiating between young and older persons.

Equality and non-discrimination

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

Article 13 of the Political Constitution of Colombia mandates: *"All persons are born free and equal before the law, will receive the same protection and treatment from the authorities and will enjoy the same rights, freedoms and opportunities without any discrimination based on sex, race, national or family origin, language, religion, political or philosophical opinion. The State will promote the conditions for equality to be real and effective and will adopt measures in favor of discriminated or marginalized groups. The State shall especially protect those persons who, due to their economic, physical or mental condition, are in a circumstance of manifest weakness and will punish the abuses or mistreatments that are committed against them."*

Thus, it can be affirmed that any type of discrimination is prohibited and that the State guarantees the protection of its citizens in all aspects related.

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 right to work and access to the labor market?

The Colombian State has administrative and judicial mechanisms to guarantee its citizens obtain reparation for denial of their labor rights. Such mechanisms are administered by Labor Inspectors and the Ordinary Labor Justice System, respectively.

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**Guiding questions for Focus Area:
Access to Justice**

COLOMBIA

National legal framework

- 1. How is the Access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?**

The Colombian Constitution establishes several judicial and extrajudicial mechanisms to make constitutional rights enforceable. Through legal action all persons, including the elderly, are able to demand before a judge the immediate protection of their fundamental rights (Legal action or “acción de tutela – in Spanish”), make claims in regards to the violation of collective or environmental rights (popular action), question the constitutionality of the laws issued by the legislator (public action of constitutionality), dispute the legality of administrative acts by the executive (annulment action), and request the reparation of damages caused by the State or an individual (actions of civil and state responsibility).

As for extrajudicial mechanisms, “alternative dispute resolution mechanisms” (MASC) include “conciliation in law and equity”, “peace judges”, “friendly composition” and “arbitration courts”.²

Availability

- 2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?**

The Colombian State has implemented several public policies to guarantee access to justice for all people. One of the most representative is the “National Program of Civil Coexistence Centers and Houses of Justice”. This program consists of information centers, guidance and provision of alternative conflict resolution mechanisms. The Houses of Justice are located in both urban centers and remote areas, to guarantee easy access for older persons with mobility difficulties.

Accessibility

- 3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?**

To ensure that justice systems are safe, affordable and physically accessible to all people, including older persons, the State has implemented programs for decentralization of services and legal advice, such as the “National Program of Civil Coexistence Centers and Houses of Justice” and the “mobile booths for orientation, legal advice and administrative proceedings” that have been developed by several public entities. These initiatives were developed to bring justice to all people, eliminating physical and geographical barriers between State entities and citizens.

² <https://www.minjusticia.gov.co/MASC/-Qu%C3%A9-son-los-MASC> (information available only in Spanish)

4. What are the existing provisions to guarantee legal assistance for older persons?

Legal advice is guaranteed mainly through: (i) legal offices/clinics managed by law schools under state supervision. They provide free legal advice and representation to people with low income, to guarantee access to justice for all people. (ii) Public entities responsible for the defense of human rights, providing legal advice and representation. They are of great importance in remote areas where legal offices/clinics do not exist.

5. What are the specific challenges encountered by older persons in accessing justice and remedy in your country?

Even though the State has been implementing public policies and legislative reforms to combat judicial congestion that generates excessive delay in judicial processes, currently a specific challenge is that older people must face long waiting periods in the resolution of their judicial conflicts. Therefore, the State is promoting alternative dispute resolution mechanisms that can offer a faster response to this population. Likewise, the “Ten-Year Plan of the Justice System” is being implemented, seeking to promote the efficiency and modernization of the judicial system. Colombia has also identified obstacles caused by the lack of preparation and training of justice operators and institutions in general, to provide differential and adequate treatment to older persons given their vulnerability. Physical barriers have also been identified, which correspond to obstacles and limitations of spaces and infrastructures that prevent or hinder the access and use of certain spaces and goods under conditions of equality.

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

To ensure effective access to justice, several public policies that benefit older people have been implemented, for example:

- (i) the decentralization of entities through the houses of justice;
- (ii) the obligation of preferential attention for the elderly;
- (iii) implementation of the “effective index of access to justice” with the guidance of the OECD;
- (iv) issuance of Law 1251 of 2008 that establishes protection parameters for the fundamental rights of older persons;
- (iv) a congressional bill currently in progress seeking to approve the Inter-American Convention on the Protection of the Human Rights of Older Persons.

Equality and non-discrimination

7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?

The main measures regarding this subject are:

- (i) Simplification of procedures;
- (ii) Free legal advice through legal offices/clinics and state entities;
- (iii) National Public Defender System;
- (iv) “Clear language guide” for public servants;

(v) Creation of a fund for the modernization and decongestion of the judicial system.

8. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.

The Colombian State has a judicial academy that provides training to judicial officials on protocols for assistance to persons in vulnerable conditions, persons with disabilities, older adults, among others.

Accountability

9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.

In Colombia, judges are part of the judicial branch, which is independent and autonomous from the other two branches of public power (legislative and judicial). In addition, the Constitution establishes that judges in their decisions should only be subject to the rule of law. Such provision guarantees their independence and impartiality. Regarding the mechanisms to prevent and sanction discrimination against older persons, there is the “disciplinary process” figure, aimed to sanction any inappropriate conduct from a judge or judicial officer.