



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

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Guiding Questions for Focus Area: [Access to Justice](#)

VAE response

National legal framework

1. *How is the access to justice by older persons guaranteed under the national legal and policy framework?*

+ National legal and policy framework of Vietnam related to OP consists of 3 main aspects:

- The Rights and obligations of the elderly (Against Age discrimination, dignity, access to property, credit and loan, work and learning, gender equality...)
- Social protection, social pension, longevity ceremony, wellbeing...
- Caring for OP (family responsibility, community, OP association, state)

In general, older persons like other citizens could access to justice under the national legal and policy framework, especially about social protection policies (46% OP receives retirement pension, social pension and other allowance). But, in fact, there are some OP could not access to justice, especially in: credit loan for increase income (poverty rate of OP- 20%, higher than common rate- 5%) ; land and property ownership; decision rights; gender equality/ violence, disable treatment, priority in some areas; learning conditions; health and social care services, social pension.... The reasons mainly are un effective implementation of laws and policies; limited awareness about OP and OP rights.

The laws guarantee that older people will get a fair solution to the justice problems are:

The Elderly Law:

- Article 4. Government responsibility for OP (Provide budget to health care, social protection, promote the role of OP; strict enforcement...)
- Article 5. Responsibilities of institutions, organization, family and individuals (Have to take care, protect rights of OP, propaganda and knowledge about the responsibilities, monitoring and...)

- Article 12. Health examination and treatment for OP: OP have priority in health station and hospital (Ministry of Health)
- Article 13. Commune health station have to do free health check for OP (2 time per year)
- Article 27. Vietnam Association of the Elderly has to protect rights for OP
- Article 28. Responsibility of Ministry of Labor (MOLISA), Ministry of Finance (MoF)...; and Responsibility of People Committee (province, district, commune) in implementation and guideline for Social protection for OP.
 - The Decree 06/ 2011/ NĐ-CP of government of the implementation of the Elderly Law.
- Article 17. Budget for social protection and others.
- Article 18. Responsibility of Government, MOLISA, MoH, MoF... and People Committee in implementation and supervising.
 - The Decree 136/ 2013/ NĐ-CP of government of social protection.
- Article 38. Responsibility of MOLISA, MoF... to do guideline and implementation the Decree.
- Article 39. Responsibility of People Committee in implementation and provide budget.
 - The Law of Administrative fine- 2012
 - The Decree 144/ 2013/ NĐ-CP of government of the administrative fine rules in social protection and children protection and caring.
- Article 14, 18,19,20 Fine and compensation to violators for the OP (don't take care, feed, give priority, respect and violence, abuse, discrimination...)
- The Law of Mediation at grass root level 2013
 - Article 14: Cooperate with OP Association and others in Mediation.
- Others

What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

+ Judicial mechanisms are: Local authority (People committee at commune, district, province levels) has duty to guarantee the rights of OP, OPA and family support them. If the OP want to complain and seek redress for their rights, they and their children can: complain at grass root authority or higher level (may be with support their family, OPA,...); complain at police; denounce at media (newspaper, television, radio, .. and now use social network); complain at court, etc.

Non-judicial mechanisms are: OP can complain at OP Association/ Women

Association, at Mediation Team.

But in fact, there are small number of disadvantage OP, some complains unresolved. The reasons are: lack of sanction for punishing the wrongdoers; local authorities un effective; without support of family and OPA/ clubs; lack of awareness of law...

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?*

To ensure the availability of judicial and non-judicial mechanisms for OP, some steps have been taken as:

- 1) VN Committee for OP, Assembly, VAE and others do supervise and report to the government (critic and give recommendation functions)
- 2) NGO and social organization, authorities, assembly, experts... do the review, reports, and collection of requests from OP and other people at community about situation of judicial and non-judicial mechanisms (an unpractical, deficiency, lack of sanctions in law implementation, monitoring...) and give the recommendation to authority (ministries, people committee, assembly...);
- 3) Related ministries issued revised circulars of social protection, health care for OP, the policy of priorities for OP...
- 4) Information and media programs about Ageing and OP. Raise awareness of people and OP about OP right.

Now, in Vietnam have mediation mechanisms, at the commune level (at each commune there is 1 Mediation team consist of representatives of authority and mass associations, if in commune has any complain or conflict, the mediation team meet subjects to explain and support).

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 the accessibility, the steps have been taken:

- 1) Network of OPA, Self-help clubs and other mass organizations in the community to help OP have been enhanced. (The representatives participate in Mediation team...). OP should have support from OPA, OP clubs, Veteran Association, OP clubs
- 2) Encourage participation of experts and NGOs, organizations like VAE, OPA, Women Union, Veteran Association...

3) OP can denounce in media, newspapers

4) Courtrooms, legal tribunals, and other justice-related facilities should be accessible to all OP;

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

There provisions to guarantee legal assistance for older persons such as:

- The Constitution of Vietnam approved in 2013 in which:
 - Article 16: 1. All citizens are equal before the law. 16:2. No one shall be discriminated in his or her political, civic, economic, cultural, social life.
 - Article 37: 3. The state, the family and society shall respect and take care of Old persons and promote their role in the career of national construction and defense.
- **The Elderly Law,**
 - Article 4. Authority policies for OP (Provide budget to health care, social protection, promote the role of OP; strict enforcement...)
 - Article 5. Responsibilities of institutions, organization, family and individuals (Have to take care, protect rights of OP, propaganda and knowledge about the responsibilities, monitoring and...)
 - Article 12. Health examination and treatment for OP: OP have priority in health station and hospital.
 - Article 13. Commune health station have to do free health check for OP (2 time per year)
 - Article 27. Vietnam Association of the Elderly has to protect rights for OP
 - Article 28. Responsibility of Ministry of Labor (MOLISA), Ministry of Health (MoH), Ministry of Finance (MoF)...; and Responsibility of People Committee (province, district, commune) in implementation the law and regulation.
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- Others

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

The specific challenge in accessing justice and remedy in Vietnam is authority don't like glasnost way, so people are lack of information, or they easily recognize their mistake but don't correct the faults. Beside, we are lack of adequate punishment rate for violators.

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

The effective and good practices of ensuring equal and effective access to justice and remedy for older persons are promotion the role and support of the organization at the commune level. Besides OPA, women, veteran Associations... we establish and replicate Intergeneration Self-help clubs (ISHC) over the country which the take care, help each other and protect the rights of OP (ISHC has 8 activities, one which is Activity Protect the rights for members and OP in commune, so if there is any one has difficulty/ challenge, they could be supported to make complaints to authority/ high level OP association or contact with mediation team at commune level)

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?

Now, The Elderly Law, the Decree 136/ 2013/ NĐ-CP, The Law of Administrative fine- 2012, The Decree 144/ 2013/ NĐ-CP of government have provisions can ensure effective access to justice for OP.

- The Elderly Law:
 - Article 4. Government responsibility for OP (Provide budget to health care, social

protection, promote the role of OP; strict enforcement...)

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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.*

We have no existing public policies and awareness-raising and capacity building programs established for all justice system personnel to address the negative impacts of ageism and age discrimination injustice system. Age discrimination sometime happens in implementation (OP can't access to credit from state microcredit programs and loan from bank; OP rarely have benefited from support programs from the state and other donors (poverty-reducing, training, microcredit programs, etc.); Age limits in decision making, deficiency in care...)

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.

We think justice systems function following the principles of independence and impartiality, but incompletely. So, we have enhanced the recommendations, provide more evidence to revise the Laws and legal documents.