



Questionnaire on ageing: education, work, social security and justice

## **Defensoría del Pueblo de Ecuador**

National Directorate of Public Policy Research and Advocacy

### **Questionnaire on ageing: education, work, social security and justice**

**Requesting Organism:** Open-ended Working Group on Ageing

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## **Introduction**

The Office of the Ombudsman of Ecuador (DPE, for its acronym in Spanish), within the framework of its competences, sends this document in response to the request for information sent by the Chairman of the Open-ended Working Group on Ageing.

This document analyses some of the requested aspects regarding the following topics: 1) Education, training, lifelong learning and capacity building 2) Social protection and social security; 3) Right to work and access to the labour market; and, 4) Access to justice. It should be noted that this questionnaire is partially answered within the framework of the Ombudsman's competence.

If more information is needed, please contact the National Directorate of Public Policy Research and Advocacy at [dniipp@dpe.gob.ec](mailto:dniipp@dpe.gob.ec) or by phone (+593) 02 330 1112, ext. 2511, 2519, 2518.

### **Section: Education, Training, Life-long Learning, and Capacity-building**

**1. - What are the definitions of the rights of older persons to education, training, life-long learning and capacity-building in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?**

On the article 26 of the Constitution of the Republic, education, in general, is a right of all people throughout their lives, and it constitutes a priority area of public policy and state investment, guarantee of the equality and social inclusion and indispensable condition for good living. In the specific case of the elderly people, article 38 of the Constitution, numeral 1, grants the obligation to the Ecuadorian State to establish public policies and care programs; through the attention of specialized centres that guarantee their education in a framework of integral rights protection.

The Organic Law for Older Adults determines among other rights and obligations, the joint responsibility of the society (article 10), the right and access to education (article 48), actions taken by the State to guarantee this right (articles 49,59), the attribution of the governing authority in education with an intercultural approach (articles 68,69), and public policy guidelines (article 59).

**2. - What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on education, training, life-long learning and capacity-building for older persons?**

The Constitution of Ecuador on its article 35 indicates that “Older adults (...) will get priority and specialized attention in both public and private areas. (...) The State shall provide special protection to people in a double vulnerability condition.” Likewise, as mentioned above, article 38 of the Constitution provides the State with the generation of public policy for the elderly, ensuring their attention in nutrition, health, education and daily care specialized centres.

The Organic Law for Older Adults (LOPAM, for its acronym in Spanish), published in the Official Gazette on May 9<sup>th</sup>, 2019, replaced the Law of the Elderly (2000), which aimed to harmonize national legislation with international rights protection instruments for older adults.

In this sense, the LOPAM establishes on its article 9, literal m, as the duty of the State

“To ensure that public and private sector institutions comply with priority and specialized attention to the elderly population, as well as contemplate in their policies, programs, and strategies the needs of the elderly population, subject to this Law and valid regulations (...).”

Besides, the LOPAM on its article 49 states that, for the exercise of the right to education, the State must carry out the following actions:

- a) In the plans and programs of study of all educational levels, the State will encourage the incorporation of contents on the process of active ageing, dignified, healthy, without violence, and respect to the rights of the elderly;
- b) Generate quotas for elderly adults with unfinished schooling or who have not been able to access in due course at all levels of education; and,
- c) To recommend a flexible educational offer that fits the reality of the elderly people.

The National Specialized System of Integral Protection of the Rights of Older Adults will coordinate every policy for the integral protection of the rights of elderly people, through the design, formulation, execution, monitoring, and evaluation of standards, policies, mechanisms, and public and private services, in all instances and at all levels of the government. This system has among its guidelines “to promote continuous education, permanent learning and re-learning that promote active and healthy ageing” (article 59).

Thus, the LOPAM foresees that the national education authority will have as its attributions:

- a) Design public education policy with an intergenerational approach, through plans, programs, projects that guarantee the right to education throughout life;
- b) Promote awareness campaigns to prevent and eradicate situations of violence against the elderly, with members of the educational community system;
- c) Strengthen the rights approach included in the curricular contents of all levels, sub-levels, and modalities of the national education system, especially those related to teaching and respect for the rights of elderly adults, promoting a positive image regarding the aging process in order to eliminate discriminatory habits and stereotypes that legitimize violence; implementing affirmative actions; and,
- d) To regulate benefits in favour of elderly people regarding tuition payments, pensions, and any other item in private institutions, provided that they are direct beneficiaries of these educational services at all levels, which will be granted in accordance with the provisions of the Regulation to this law (article 68).

The National Agenda for Intergenerational Equality (ANII, for its acronym in Spanish) 2017 - 2021, in its Objective 1 for Older Adults, points out the need to guarantee a decent life with equal opportunities through policies for access to the right to health, education, and comprehensive care during the life cycle, under criteria of accessibility, quality, and territorial and cultural relevance. This objective belongs within the framework of the Whole Life Plan, within "My Best Years" programme. In addition, this Agenda highlights the importance of generating policies for access to education and the elimination of illiteracy in elderly people, through accelerated rural Baccalaureate and Eradication of illiteracy programmes.

On the other hand, the Ombudsman of Ecuador, taking into account international instruments on this area and the guidelines established by the United Nations Organization, has defined Human Rights Education as:

the set of educational and edu-communication actions of collective, creative and innovative construction that includes knowledge and understanding of the norms and principles of human rights and nature, the fundamentals that support them and the mechanisms that protect them, through pedagogical emancipatory principles, and didactic tools for the construction of learning, skills, attitudes and behaviours that contribute to the construction of a democratic society, just, inclusive, in equality, and without discrimination that promotes the exercise and enforceability of the human rights of all people, collectives, communities, peoples and nationalities in harmony with the rights of nature (DPE, 2019, Resolution 036).

From this approach, the DPE has made an effort to create methodologies that allow not only knowledge transfer, but its sharing and collective construction, allowing human rights learning processes to seek the generation of meaningful learning in accordance with the characteristics of each of the participating populations.

In this sense, the DPE has achieved at the national level the planning, design, and execution of teaching-learning processes (training and sensitization) for elderly adults based on their needs through activities built especially for this population. Likewise, the “Methodological guide for training and sensitization processes as introduction to human rights” has been developed and published. It has activities for different types of population, including elderly adults, in order to build adapted teaching and learning processes for each population segment, so that it contributes towards the empowerment of their human rights.

However, the challenge at national level is to break stereotypes and prejudices about the elderly population as this prevents the existence of educational policies specifically aimed at continuing more sustainable training, and many times the methodologies used are not consistent with their needs, therefore the expected results are not obtained. In this sense, it is necessary to make proposals on the execution of programs, plans, and projects that count on the participation of elderly people, to define content as well as experiential activities that allow them to continue learning, and above all contribute to a more active participation in the society through the enforceability of their rights.

## **Section: Social Protection and Social Security (Including Social Protection Floors)**

### **Introduction**

Social security in Ecuador, and specifically the social security system, has had serious deficiencies such as: lack of coverage for those who do not have a stable or definitive working relationship, changes on the demographic and work structure, limitations on economic sustainability, rational use of resources, and political intervention on the institutions that handle social security. (Porrás, 2015, s / p)

According to figures from the National Institute of Statistics and Census (INEC-ENEMDU, for its acronym in Spanish) (2017) 58.44% of the elderly population (65 years old and above) does not have social security, out of this percentage, more than 33% are women. Out of the elderly people who have social insurance, 23.02% has general IESS insurance, 13.76% has peasant insurance, and only 3.05% is enrolled with the general voluntary insurance. (National Council for Intergenerational Equality, 2018, p. 160)

Given this context, Ecuador is a country that has a population that begins to have significant numbers of older adults and the projections indicate a future growth. The most

alarming figures reveal that about 42% of the elderly population is not affiliated or does not receive social security protection. These alarming figures configure systematic situations of human rights violations. This context becomes more complex when said population segment is facing situations of extreme poverty, exclusion and discrimination<sup>1</sup>. Hence, it is urgent to develop a new universal model with a human rights approach.

- **What is the definition of the right to social security and social protection (including social protection floors) for older persons in the national legislation in your country?**

Article 1 of the Constitution of the Republic of Ecuador (2008) defines the State as constitutional of rights, justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular. In addition, on its article 3, paragraph 1, it is determined, as part of the primary duties of the State, to guarantee, without discrimination, the effective enjoyment of the rights established on the Constitution and in international instruments, in particular education, health, food, social security, and water for its inhabitants.

On the other hand, article 34 of the Constitution defines social security as an inalienable right of all people, determines its guarantee and protection as the primary duty and responsibility of the State and establishes solidarity, obligation, universality, equity, efficiency, subsidiarity, sufficiency, transparency, and participation as its guiding principles, in order to meet individual and collective needs.

It should be noted that article 367 of the Constitution determines the existence of the public and universal Social Security System and determines that the protection of contingencies will be effective through compulsory insurance and its special regimes.

Additionally, the Constitution recognizes Older Adults as a priority care population in accordance with article 35; likewise, article 36 determines that they will receive priority and specialized attention (...) especially on the fields of social inclusion (among others). Within the framework of social security, article 37 of the Constitution recognizes as a specific right of older people the access to universal retirement.

- **What are the key normative elements of the right to social protection and social security for older persons? Please provide references to existing standards on such elements as below, as well as any additional elements:**

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<sup>1</sup> This information has considered the contributions of the Questionnaire on the rights of older people with disability, requested by the United Nations Special Rapporteur on the rights of persons with disabilities, 2019.

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- a) Availability of contributory and non-contributory schemes for older persons
- b) Adequacy of benefits to guarantee older person's access to an adequate standard of living and adequate access to health care
- c) Accessibility, including older person's coverage by social security systems, eligibility criteria, and affordability of contributions
- d) Equitable access by older persons to the enjoyment of the right to social security and social protection, paying special attention to groups in vulnerable situation
- e) Participation of older persons in the design and administration of the social security system.

The Social Security System established in Ecuador, as we have stated in the previous question, is universal, this means that the system can be accessed by any person recognized as a subject of rights in the Constitution, without any discrimination.

The Social Security Law, on its article 1, establishes the Compulsory General Insurance as part of the Social Security System, within which determine all people who earn an income for the execution of a job or the provision of a physical or intellectual service, with or without a work relationship are subjects of protection (art. 2). The Social Security law does not at any time discriminate by age, so it should be understood that if an older person is within the category indicated above must be considered as enrolled and must comply with the corresponding obligations for access to the rights and services provided by the entity.

It should be noted that the established General Mandatory Insurance protects members affiliated by risks such as: illness, maternity, work risks, old age, death and disability, which includes disability, unemployment and unemployment insurance, as determined by article 3 of the Social Security Law.

Likewise, article 184 establishes retirement classes, the first one for ordinary old age, the second one for disability, and the third one for advanced age; ordinary retirement of old age has as requirements that the person enrolled is 60 years old and has a minimum of 360 monthly impositions; it establishes as an alternative that if the person enrolled has contributed a minimum of 480 monthly contributions there will be no age limit (article 185).

Retirement for advanced age, established in article 188 of the Social Security Law, establishes two situations:



- a. Been seventy (70) years old, provided the person records a minimum of one hundred and twenty (120) monthly impositions, even if the person is active at the date of approval of his/her retirement application; or,
- b. Been sixty-five (65) years old, provided that the person records a minimum of one hundred eighty (180) monthly impositions, and proves to the IESS that s/he has been unemployed for at least twenty (20) consecutive days, at least, at the date of submission of the retirement application.

### **Section: Right to Work and Access to the Labour Market**

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

Following the constitutional principles established since 2008, the Ecuadorian State is a constitutional State of rights and justice, in which structural strategies have been developed aimed at establishing adequate mechanisms to guarantee the full exercise of human rights for all people without any discrimination, as provided in the article 11, numeral 2 of the Constitution of the Republic, in accordance with the article 79 of the Labour Code.

In this sense, the article 35 determines that there are people or groups that should have priority, special and specialized attention, within which are precisely the elderly, in accordance with article 36. Regarding the right to work, article 37, numeral 2, states that the State must guarantee older people the following rights: “(...) *Paid work, according to their abilities, for their limitations will be taken into account*”.

The obligations that the State has for the fulfilment of the rights of elderly people are found on article 38. Regarding the right to work, it is specified that the State must take measures to: “(...) 2. *Special protection against any type of labour or economic exploitation (...)*”.

On the other hand, the Organic Law of Older Adults was approved this year (2019), which transversely promotes, regulates, and guarantees the full validity, dissemination and exercise of the specific rights of elderly people. In this legal instrument the right to work of elderly people is established on the article 16, 17 and on the Section V. Finally, it should be noted that it is provided a Specialized National System for the Integral Protection of the Rights of Older Adults that has as its purpose the design, formulation, execution, monitoring, and evaluation of public policies

- **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?**

Regarding information and statistical data of older adults, the Ecuadorian State has the National Institute of Statistics and Census (INEC, for its acronym in Spanish), which is the governing body of national statistics and responsible for generating official statistics for decision making on the elaboration of public policy.

According to INEC for the year 2020, the population older than 64 years old will be 935,093, which represents 6.5% of the national population. The life expectancy of older adults increased for the year 2017 to 76.50 years old (National Agenda for Intergenerational Equality, 2018, p. 159).

In addition to the National Employment and Under-Employment Survey (ENEMDU, according to its acronym in Spanish) of March 2019, the unemployment rate of older adults (over 65 years old) is 6,941; while appropriate employment is 108,343.

However, a pending matter is for the Ecuadorian State to carry out more significant studies that account for the situation of older women in relation to access to informal work, both in rural and urban spaces.

- **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?**

The Constitution of the Republic of Ecuador determines that older adults should have priority, special and specialized attention in the public and private spheres; within this framework, the Ecuadorian State has been implementing the "A Lifetime Plan", which objective is to deepen the construction of an inclusive, equitable, and human society.

In this framework, through "My Best Years Mission", it is sought to eliminate the traditional conception of old age, as well as to increase the well-being of older adults, from a vision that is characterized by recognizing the individual and social aspects of people. This Mission is operationalized through the following components: 1) Favourable environments and care services; 2) Income security; 3) Skills and employability; and, 4) Health status (Technical Secretariat of the Lifetime Plan, 2018, p.37).

Likewise, as previously mentioned, the Organic Law for Older Adults (2019) suggests the creation of a "Specialized National System for the Integral Protection of the Rights of

Older Adults<sup>22</sup> which is defined as an organized and articulated set of institutions, public and private services, norms, policies, plans, programs, mechanisms, and activities aimed at guaranteeing integral, priority, and specialized protection for elderly people, which includes the prevention of all types of violence and integral reparation of rights when they have been violated.

- **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?**

Regarding equality, the Ecuadorian State has made special progress at regulatory level, so in the Constitution (2008), the recognition, and formal and material equality that all people must possess, and non-discrimination on the grounds of age stand out.

However, labour discrimination is a phenomenon that has existed throughout history, since access to work for elderly people is conditioned because limits are established on the maximum age to enter the labour field, despite the existence of norms that regulate and protect work as a right. Therefore, it is necessary for the Ecuadorian State to indicate which are the strategies, plans, and programs so that older adults can access work on equal terms.

- **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 labour market?**

Ecuador has a legal framework that establishes mechanisms to guarantee human rights of elderly people that are foreseen in the Constitution of the Republic, Organic Law of Jurisdictional Guarantees and Constitutional Control, Organic Law of the Ombudsman's Office, and Organic Law of Older Adults.

Within this framework, the Ombudsman's Office of Ecuador is constituted as one of the mechanisms arranged for the reception and attention of complaints or petitions that are presented by older adults, considering the internal procedures.

However, it is important to differentiate that regarding the tutelage and protection of the right to work, the Ombudsman Office has full competence to act, but as regards on search for financial compensation for the affectation of this right, the appropriate route is the judicial one. In that sense, the Ombudsman's actions are characterized by observing the judicial process, monitoring the validity and compliance with minimum standards of the right to due process.

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<sup>22</sup> Organic Law for Older Adults, article 54.

### **Section: Access to Justice**

- **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?**

There is no a specialized area destined to the care of older persons; however, the judicial mechanisms are in obligation of serve this population diligently, on a particular way and in pursuit of the full validity of their rights, because the older persons are a priority care group according to the Constitution.

There are judicial and jurisdictional mechanisms for the protection of elderly people's rights. On the one hand, judicial mechanisms are applied by the competent authorities of the courts and tribunals of the Republic. These mechanisms are used when an older person is victim of an alleged violation or threat of the rights established in the Constitution, or in any national regulation.

The jurisdictional mechanisms are aimed for the effective and immediate protection of the rights recognized in the Constitution and in international human rights instruments, and to find access to repair damages caused by violations of one or several rights. These mechanisms are found in the Organic Law of Jurisdictional Guarantees and Constitutional Control.

- **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?**

Ecuador is territorially organized in regions, provinces, cantons, and rural parishes. In that sense, the Public Administration constitutes a service to the community that is governed by the principles of effectiveness, efficiency, quality, hierarchy, decentralization, coordination, participation, planning, transparency, and evaluation.

In accordance with the aforementioned, each autonomous region has specific competences regarding organization, planning, and governance of their territory. The purpose of the Decentralized Autonomous Governments (GAD, for its acronym in Spanish) is to “guarantee, without discrimination and in the terms established in the Constitution of the Republic, of full validity and effective enjoyment of individual and collective rights and those contemplated in international instruments”.

The Organic Code of Territorial Organization Autonomy and Decentralization (COOTAD, for its acronym in Spanish) indicate that GADs, in different levels of territoriality, must implement the integral protection system for the exercise, guarantee and enforceability of the rights. Also GADs have to integrate or shape networks for the protection of rights of priority care groups, including elderly people.

The Organic Law for Older Adults (art. 84), the Municipal Decentralized Autonomous Governments have specific attributions for elderly people. The “Rights Protection Boards” have to know and attend cases of threat or violation of the rights of elderly people.

- **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?**

**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 Ombudsman's Office has the attribution of "Exercise and promote due process surveillance...". In order to comply with this attribution, the Ombudsman of Ecuador issued an internal Resolution that establishes the criteria for the admissibility of cases, and also the due process surveillance.

It is necessary to point out that the due process surveillance constitutes the monitoring and supervision of all the acts carried out within an administrative or jurisdictional process that is in substantiation, in which rights or obligations are determined, in order to ensure the application, timing and effectiveness of the fundamental right to due process. But, the Ombudsman Office is not part of the procedural parties, neither supplements the actions of the judges or administrative authorities, nor of the defence lawyers, nor does it imply the execution of an administrative sentence or resolution; but in summary the Ombudsman Office would guarantee the impartiality of the process.

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