



**Contribution of the Procurador de los Derechos Humanos
of Guatemala to the Working Group on Aging Open-
ended.**

**Focus Area: “Right to Work and Access to the Labour
Market” and “The Access to Justice”**

Guatemala, October 2019

Guiding Questions: Right to Work and Access to the Labour Market

National Legal and Policy Framework

1. 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?

The Political Constitution of the Republic of Guatemala (Article 101) refers to the Right to Work as a social obligation. Likewise, article 102 establishes minimum social rights that underpin the labor legislation and the activity of the courts and authorities, among which the appropriate treatment is indicated according to the age of the workers of 60 years and over.

The Social Development Policy, Decree 42-2001 of the Congress of the Republic, considers older people within the sectors of special protection in the development, execution, monitoring and evaluation of the Social Development Policy; states that special measures should be considered to incorporate older people into development.

In addition, this policy establishes the sector policy on employment, which includes the Rural Employment Program, one of whose objectives is to provide the population with training courses for work and development projects with emphasis on the elderly and migrants.

The Law of Protection for the Elderly, Decree 80-96 of the Congress of the Republic, Article 22, refers that every person has the right to have a secure economic income through access without discrimination to work, provided that they are in good health. With regard to access, article 24 establishes that the Ministry of Labor and Social Welfare will promote programs for the reintegration of work and business training of older persons whose capacity and need merit it, giving preference to those who do not enjoy any benefits.

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?

Although there is a framework for the protection of the elderly, no specific actions have been identified on what is established in the Sector Employment Policy around the elderly.

State policies with a rights approach should be developed to fully integrate the functions of public administration institutions to comply with the state obligation to guarantee and promote the right to an adequate standard of living for the elderly, and provide them with necessary means for a useful and dignified existence; it also requires political will of the rulers to invest public resources and solve structural problems.

On the other hand, the population of the elderly faces the marginalization and exclusion of public policies, as well as the handling of myths and erroneous stereotypes by society in general, related to the fact that this population sector is no longer productive labor.

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?

According to the projections of the National Statistics Institute (INE), by 2019, the population of people 60 years of age and older amounts to 1,119,509.

According to the National Employment and Income Survey 2018 (ENEI-2018), a total of 584,596 elderly people were employed in the informal sector, of which 86.2% are men and 92.7% women.

Availability, Accesibility 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?

One of the factors that reveal the level of exclusion of the elderly in Guatemala is labor discrimination.

Changes in the organization of work, social security policy and the economic environment of the country exacerbate the vulnerability of the elderly, for example: by abolishing jobs and being laid off or by being replaced by younger population. Older people are unlikely to find a new position.

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

No actions have been identified on these issues. The Ombudsman's Office will be aware of the policies implemented by the government authorities that will assume their positions on January 15, 2020.

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?

No good practices have been identified. The Office of the Human Rights Ombudsman, through the Office of the Ombudsman for the Elderly, will make an impact with the government authorities that assume next year so that they assume a commitment to guarantee the elderly who are supported to place themselves in a job.

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?

Decree 80-96 "Law for the Protection of the Elderly", in its content guarantees the necessary protections, in spite of that there is a lack of policies to promote the permanence of the

elderly in the labor market and working conditions safe. The Office of the Ombudsman for the Elderly within its Annual Operational Plan for the year 2020 has contemplated a supervision of the National Committee for the Protection of Old Age, with the objective of verifying if as the governing body it carries out actions to comply with said law, by having the results of it will be announced.

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?

The Law on Protection for the Elderly, Article 22, refers to the fact that everyone has the right to have a secure economic income through access without discrimination to work, provided they are in good health.

However, in Guatemala, the right to work of the elderly is violated, since maximum employment is established in the job offers as a requirement for admission to jobs

Remedies and Redress

8. 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?

The Ministry of Labor and Social Welfare does not have a specific area for the care of the elderly, however, within which to do the Ombudsman for the Elderly, cases filed by the elderly are being taken as specific actions, taking due diligence to Let them be taken care of.

Guiding Questions: Access to Justice

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?

Article 2 of the Political Constitution of the Republic refers to justice as one of the main duties of the State.

The Law for the Protection of the Elderly refers that sanctions will be established in accordance with the Criminal Code, among others for the abandonment of the elderly. It also establishes that, in case of helplessness or abandonment, it is up to the State to promote the care of the elderly, either directly or through institutions established or created for this purpose.

Article 11 of said law establishes that elderly persons who are subjected to ill-treatment, offenses, humiliations or injuries, shall have the right to request protection before a competent judge against the person or persons responsible for them. Actions to which the authority will give priority.

The processing of complaints for abandonment of older persons has been in charge of the Early Decision Unit (UDT) of the Public Prosecutor's Office, and the cases have been criminalized for the crime of Failure to Comply with Duties, contained in Article 244 of the Code Penal. It is worth mentioning that the Office of Permanent Attention (OAP) has classified this type of complaints as urgent.

Currently there is no preferential treatment in the access to justice for the elderly.

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?

In 2014, the Supreme Court of Justice created the Family Court of First Instance for the Admissibility of Claims, based in the Family Justice Center of Guatemala City, with the purpose of adopting measures necessary for the effective protection of the family and the modernization of the system, through a new justice model to expedite the reception of demands and processing of processes. It is worth mentioning that, in criminal matters, it is important to create a Special Prosecutor's Office for the elderly in the Public Prosecutor's Office, since cases related to this population are processed in the Women's Prosecutor¹

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?

No related measures have been identified. Given this weakness, the PDH in October 2017 signed an agreement, for a period of 5 years, with the Judiciary to promote compliance with the Hundred Rules of Brasilia related to access to justice for people in condition of vulnerability, being that within its specific objectives is the formulation of a policy that allows differential treatment of older people who are involved in legal proceedings, said policy has already been drafted and is being reviewed by the Judicial System.

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

The Office of the Attorney General of the Nation has among its functions the representation of the State, for which it has the Department of Protection of the Rights of Women, Older Adults and Persons with Disabilities, in charge of complying with the provisions contained in the Law of Protection for the Elderly, providing protection, receiving reports of ill-treatment, offenses, humiliation or injury against them, and promoting their attention in case of homelessness or abandonment, both directly and through institutions created for this purpose.

¹ Procurador de los Derechos Humanos. Informe Anual Circunstanciado 2017. Pág. 201

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

A number of factors have affected the access to justice of the elderly in the country, including: delay and costs of the processes, lack of prompt and preferential attention and inaccessibility to the courts, as well as lack of economic resources of the people seniors to hire legal assistance.

On the other hand, in the development of the processes, the judiciary has not taken into account the life expectancy of the elderly, so they die before obtaining a resolution. These factors have violated the right to equality and access to justice for the elderly.

In criminal matters, it is important to create a Special Prosecutor's Office for the elderly in the Public Prosecutor's Office because cases related to this population are processed in the Women's Prosecutor's Office².

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

No good practices have been identified. Upon approval of the policy that is part of the signed Agreement, the Ombudsman's Office will be monitored to establish the implementation of practices that promptly and fully guarantee accessibility to justice.

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?

No related provisions have been identified.

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 Office of the Human Rights Prosecutor and the Supreme Court of Justice signed an inter-institutional cooperation agreement for compliance with the Brasilia Rules. Through its implementation, it is intended, among others, to provide comprehensive, quality, specialized and free assistance through new management models.

Within this framework of cooperation, we work on the proposal of a Policy of Access to Justice for the Elderly; Likewise, through the Office of the Ombudsman for the Elderly, he has given lectures to justice operators and administrative personnel of the Judicial Branch in order to raise awareness and raise awareness of the rights of older persons.

² Procurador de los Derechos Humanos. Informe Anual Circunstanciado 2017. Pág. 201

Accountability

9. How do you ensure justice system 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.

No monitoring mechanisms have been identified to address discrimination against the elderly. It is expected that with the implementation of the policy, as a result of the Agreement signed between the Office of the Human Rights Prosecutor and the Judicial Branch, supervision mechanisms in this area will be ensured.