

PROCURADURIA PARA LA DEFENSA DE LOS DERECHOS HUMANOS DE EL SALVADOR

Guiding Questions on the Content of Policies Related to Social Inclusion.

Definition

1. How are fundamental human rights related to the social inclusion of older person defined in the national and local legislation of your country? In El Salvador, fundamental human rights related to the social inclusion of older adults are implicitly defined in Article 3 of the Constitution of the Republic of El Salvador, which states: "All persons are equal before the law. Restrictions on the enjoyment of civil rights shall not be imposed on grounds of nationality, race, sex, or religion. Hereditary jobs or privileges are not recognized."

Specifically, fundamental human rights related to the social inclusion of older persons have been strengthened within the national normative framework, incorporating them to ensure the implementation of social programs aimed at providing a better quality of life for this population sector and spaces that allow them to exercise their rights; in accordance with the first paragraph of Article 1 of the Special Law for the Protection of the Rights of Older Person, guaranteeing the protection and promotion of human rights and fundamental freedoms on an equal basis, through policies, plans, programs, regulations, and actions that promote the inclusion of older persons; the same Law promotes inclusion in Article 5, subparagraph b), specifying the principles of equality, equity, and non-discrimination. Additionally, the component of social inclusion has been integrated into the Law on Social Development and Protection to eliminate barriers that cause inequalities among the most vulnerable populations; Article 5 of the Law establishes concepts and definitions of principles closely linked to social inclusion, such as: common good, continuity, social equity, enforceability, social equality, substantive equality between men and women, distributive justice, freedom, non-discrimination, citizen participation, progressivity, respect for cultural diversity, solidarity, and universality.

Scope of the Right

2. Please refer to the current national legal norms regarding the social inclusion of older person in relation to normative elements such as:

a) The right of older persons to participate in cultural life; Article 39 of the Special Law for the Protection of the Rights of the Older Persons promotes and guarantees an inclusive culture for older persons, strengthening autonomy and active aging through plans and programs in various branches of the arts.

b) The inclusion of older persons in the digital sphere; Article 35 of the Special Law for the Protection of the Rights of the Older Persons promotes the implementation of training programs related to new information and communication technologies aimed at older persons.

c) Ensuring that older persons can live independently and be included in the community; Articles 6 letter e) and 44 of the Special Law for the Protection of the Rights of the Older Persons seek to improve the integration and participation of older persons in family, social, and community activities, promoting autonomy and independence, thus avoiding marginalization, exclusion, and separation from their surroundings.

d) Guaranteeing the social inclusion of older persons living in institutions; Article 20 of the Special Law for the Protection of the Rights of the Older Persons promotes inclusion in care centers or residences for older persons, whether public or private, promoting activities that preserve participation, autonomy, equality, and respect among the residents. Likewise, in paragraphs 2, 4, 5, and 6 of Article 9 of the Manual for the Regulation, Improvement, and Supervision of Shelters and Residences for older Adults, it is established that substitute homes and residences are obliged to promote rights related to inclusion.

e) The inclusion of older persons in intergenerational policies and programs; Article 41 letter e) of the Special Law for the Protection of the Rights of the Older Persons encourages intergenerational participation actions in municipal spaces, with the aim of building an inclusive society.

f) Access to immediate resources and reparations when the rights of older persons related to social inclusion are violated. State obligations. In accordance with national and international human rights regulations, access to justice is guaranteed to the older persons population. The Constitution of the Republic of El Salvador recognizes the remedy of amparo, establishing that any person whose fundamental rights have been violated may appeal to the Constitutional Chamber of the Supreme Court of Justice for the violation of their constitutional rights, in this case, the rights of the older persons, which are closely related to social inclusion, so that the Chamber may act through resolution of restitution, reparation, and the exercise thereof, in accordance with articles 174 and 247 of the Constitution of the Republic.

g) What measures should the State adopt to respect, protect, and fulfill the relevant human rights in order to guarantee the social inclusion of older persons? Special considerations. Measures to be adopted by the State to ensure the social inclusion of older adults: i. Expand the coverage of the Universal Basic Pension (UBP) program to older persons in order to reduce inequalities, extreme poverty, vulnerability, and social exclusion; ii. Implement effective policies to reduce extreme poverty among the older persons focusing on those residing in geographically vulnerable areas, and; iii Implement and

disseminate the National Policy for the older persons, which was recently approved, whose programs should respond to the eradication of poverty, lack of economic resources, and strengthen the autonomy and independence of older persons.

4. What special measures and specific considerations should be considered to respect, protect, and fulfill the relevant human rights in order to guarantee the social inclusion of older persons? Execution. i. Create specialized programs that involve the social inclusion of older persons in order to reduce poverty and vulnerability of the population; ii. Generate strategic inter-institutional agreements to improve all social inclusion processes; iii. Promote social inclusion within educational programs based on respect for the autonomy and independence of older persons, and; iv. Create regulations, policies, and actions for the prevention of behaviors related to discrimination and social exclusion. Implement universal design and reasonable adjustments in public and private institutions to ensure that older persons enjoy and exercise their human rights.

5. What are the best practices and the main challenges faced by your country in adopting and applying the relevant human rights to ensure the social inclusion of older persons? In order to ensure the social inclusion of older persons, the Ministry of Local Development (MINDEL) implements the Food Assistance Program and the Universal Basic Pension (UBP) Program, which allows older persons to exercise their rights, autonomy, and independence, as well as fully integrate into family, community, and social life; however, the program presents a significant challenge, which is to expand its reach and coverage, requiring the strengthening of material and financial resources.

13th meeting of the Open-ended Working Group on Ageing: Guiding questions on normative content related to the right to health and access to health services.

Definition:

How is the human right of older persons to the highest attainable standard of physical and mental health defined in national and local legislation in your country? If no definitions are available, how should those rights be defined in light of relevant national, regional, and international legal frameworks? The human right of older persons to enjoy the highest attainable standard of mental and physical health is implicit in Article 65 of the Constitution of the Republic of El Salvador. On the other hand, Article 6 letter d) of the Special Law for the Protection of the Rights of the older persons defines it as the right to "receive comprehensive medical, geriatric, nutritional, and gerontological assistance in a timely and effective manner."

2. The human right to health encompasses both access to healthcare and the provision of material and other conditions necessary for its full enjoyment. What measures have been adopted to ensure that older persons have access, on equal terms with others, to social protection, adequate water supply and sanitation, adequate housing, and health education? Scope of the right. Special Law for the Protection of the Rights of the older

persons, articles 1, 6 letter a), and 14 letter a) guarantee older persons access to healthcare on equal terms; while the National Health Promotion Policy includes access to healthcare for all individuals on equal terms, social protection, adequate water supply and sanitation, adequate housing, and health education. Likewise, the Comprehensive Care Model for the older persons promotes a favorable environment for active and healthy aging through comprehensive multi- and interdisciplinary care.

a) Prohibition of all forms of discrimination against older persons on grounds of age, alone or in combination with other motives, in all health-related matters. Older persons suffer from all kinds of discrimination in the national health system, negatively impacting their physical, mental, and social well-being, implying a deterioration in quality of life. Given the increasing cases of discrimination against older persons in the national health system, the Special Law for the Protection of the Rights of the Older Persons in Article 7 prohibits discrimination and social exclusion that hinder the full enjoyment or exercise of human rights and fundamental freedoms of older persons.

b) Provision of facilities, goods, and healthcare services for promotion, prevention, cure, rehabilitation, and palliative care, as well as healthcare and support, particularly in areas such as quality of care, long-term care, and palliative care. In national legislation, the Health Code, the National Health Promotion Policy, the Technical Guidelines for Palliative Care of the Integrated National Health System, the Health Care Model for the older persons, and the Technical Standard for Comprehensive Health Care for the Older Persons guarantee healthcare and accessibility and availability of inputs from establishments, goods, and healthcare services for promotion, prevention, cure, rehabilitation, and palliative care, as well as healthcare and support, particularly in areas such as quality of care, long-term care, and palliative care.

c) Availability, accessibility, acceptability, and quality of facilities, goods, and healthcare services, as well as healthcare and support, including aspects such as quality of care, long-term care, and palliative care support. National laws, plans, policies, and programs must be along with economic measures to ensure availability, accessibility, and quality of facilities, goods, and healthcare services without discrimination, including equitable distribution of services and goods in the community, maximizing resource availability to enforce the right to health, particularly for those older persons who have medical conditions requiring specific attention.

d) Exercise of legal capacity of the older persons on equal terms with others, including the capacity to give informed consent, make decisions and choices about their treatment and care. The right to legal capacity contemplated in articles 6 letters e) and h), 31, and 77 of the Special Law for the Protection of the Rights of the Older Persons promotes the principle of autonomy and independence of the older person by facilitating informed and participatory decision-making, administration of their property, and conclusion of legal acts;

regarding the health framework, it provides support measures to express anticipated will in exercising their rights.

e) Access to prompt and effective resources and reparations when the right to health of older persons is violated. In accordance with national and international human rights law, the justiciability of economic, social, and cultural rights to the older persons population is guaranteed, these rights to benefits, such as the right to health, are protected by effective judicial remedies, and there is a legal framework for the exercise of judicial actions to ensure the immediate protection of the right to health of older persons.

State Obligations

4. What measures must the State take to respect, protect, and fulfill the human right of older persons to the highest attainable standard of physical and mental health, in relation to the aforementioned normative elements? Special considerations. The State must improve the availability, accessibility, and availability of health services for older persons without discrimination.

5. What special measures and specific considerations should be taken into account when drafting normative content on the right to health of older persons? The considerations to be taken into account in normative content to guarantee the right to health of older adults include ensuring that establishments, goods, and services are accessible, acceptable, and of good quality for this population sector. Likewise, normative content should be based on a human rights approach that considers the universality of the right to health, equality, and non-discrimination of older adults.

6. How should the responsibilities of State Parties, including the private sector, be defined in the context of the human right to health of older persons? Regarding the responsibility of the Salvadoran State, it should monitor the actions of the private sector, demanding respect for human rights, adopting due diligence processes to protect the right to health and related rights, such as the right to life and personal integrity of older persons, through laws, mechanisms for access to justice, healthcare, quality information, availability of judicial resources, and redress mechanisms when there is an alleged violation of the human rights of older persons by the private sector.

7. What are the promising practices and main challenges facing your country in adopting and implementing the normative framework on the human right to health of older persons? Among the promising practices that strengthen healthcare for older adults are: the creation of the "Technical Standard for Comprehensive Health Care for the Older Persons", which aims to strengthen the "Health Care Model for the Older Persons" and thereby ensure regulation that guides the work of public health system personnel; however, both this Standard and the Model are unknown to the majority of older adults, as well as healthcare workers. (PDDH, cited, p. 23, Situational Diagnosis on the Validity of the Human

Rights of Older Adults in El Salvador, 01-27-2023). Likewise, the National Policy for the Older Person was created, but its content has not been implemented or disseminated so far.

The main challenges facing the normative framework on the right to health of older persons are: transforming into a national health system, through the promotion of protective regulations for healthcare of older adults, the immediate implementation and dissemination of the National Policy for Older Persons, which has recently been approved, providing gerontological-geriatric care, implementing training and awareness programs for personnel providing healthcare to older adults; ensuring the availability of goods and services in the national health system to provide a high degree of quality and satisfaction to older adults.