

Guiding questions for the twelfth session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Focus area 1: Contribution of older persons to sustainable development

The Scope:

Older persons have the right to contribute to sustainable development. The right to participate in, and contribute to, development is affirmed in the Declaration on the Right to Development. Article 25 of the International Covenant on Civil and Political Rights recognizes the right to participate in public affairs. Effective and meaningful participation enables the advancement of all human rights. On the other hand, when older persons are denied the ability or opportunity to contribute, or when their contribution is unrecognized or devalued, their dignity is denied. Understanding the contribution of older persons to sustainable development as a right enables States to identify steps that can be taken to uphold their dignity.

Substantive guiding questions:

National Legal and Policy Framework

1. What are the legal provisions, policy frameworks in your country that recognize older persons' right to participate in and contribute to sustainable development? This could include, but is not limited to:

The Mexican Constitution in its 6th, 7th and 9th articles guarantees the right of access to information, freedom of opinion and freedom of association, respectively. According to these articles, the right of access to information will be guaranteed by the State and the free manifestation of ideas will not be prosecuted by any means, unless it attempts against moral, private life or third party's rights.

Additionally, the freedom to transmit information, opinions or ideas by any means is unalterable as well as the right to associate or assembly pacifically regarding any legal objective. Moreover, one of the main principles of the Older Persons' Rights Law is the principle of participation, which implies the insertion of older persons in every aspect of public life as well as their opinions and intervention upon the areas of their interest.

Participation of older people in society is not only seen as a principle, but as a right in the Law, which establishes that this group of population have the right to participate in the planning of social development through decision making. Also, older persons have the right to associate and to form organizations to promote their development and take part in the actions targeted to this age group and to participate in productive processes, education, training, cultural and recreational aspects of their communities.

Also, the following is considered:

- a) Ensure that relevant human rights (particularly the right to freedom of expression, the right of access to information, and the rights to freedom of association, assembly and demonstration) are protected and implemented.

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- b) Protect and improve public space and collaboration with civil society that represents the voices of older persons regarding sustainable development.

The actions carried out by the Programs operated by this Unit are not aimed at protecting and improving public space. However, and in order to strengthen citizen participation mechanisms that contribute to the prevention and fight against corruption, the beneficiaries of the Programs, freely and voluntarily, may carry out social control activities.

In order to monitor and ensure compliance with the objectives and goals of the Program, as well as the correct application of the assigned public resources.

- c) Good practices to ensure the participation of older persons and their contribution to sustainable development.

From the reform to Article 40. Constitutional Law of the Political Constitution of the United Mexican States, the right to a non-contributory pension for older adults is raised to constitutional rank. With which, it contributes to protecting the well-being of older adults, since it is now the obligation of the State to guarantee the full exercise of those rights established in the Magna Carta.

In this way, it contributes to complying with the 2030 Agenda for Sustainable Development, in the Objectives: 1. End poverty in all its forms throughout the world; 2. End hunger, achieve food security and improved nutrition, and promote sustainable agriculture; and, 10. Reduce inequality within and between countries.

2. What are the challenges faced by older persons for the realization of their right to contribute to sustainable development at national and international levels?

Regarding the representation of older persons in sustainable development, one of the main objectives of the Institute is to promote a positive view of this age group throughout the public, private and social sectors, by publishing materials, establishing agreements with other institutions on the best interest of this group, as well as making visible their needs and contributions to society.

Nevertheless, older persons in Mexico have challenges to make effective their right to contribute in sustainable development, especially due to generalized ageism stereotypes in society which lead to discrimination on certain aspects. As the CNDH states in its special report about the rights of older persons in Mexico, there seems to be an alienation between public policy and the family and community environments.

Similarly, it is necessary for organizations, institutions and governments at all levels to be aware of the needs presented by this sector of the population, and to support decision-making when developing strategies that directly affect and that they contribute to their comprehensive development as subjects of law, in order to contribute to improving their quality of life.

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3. What data, statistics and research are available regarding older persons' contribution to sustainable development?

The National Survey on Discrimination (ENADIS for its acronym in Spanish) gives valuable insights on the main problems stated by the older persons surveyed. However, another challenge is the lack of data and statistics regarding the contributions of this group to sustainable development, since the majority of the statistics available refer to the health status of this age group, which is important but not enough to comply with the objective of making them part of development.

Equality and non-discrimination

4. What measures are being taken to eliminate ageism, ageist stereotypes, prejudices and behaviors that devalue older persons' contribution to sustainable development?

As stated above, the INAPAM has the capacity of promoting a positive view of older persons, not only within the public sector, but in the private and social sectors as well. The main activities and procedures to accomplish this is to establish agreements with the 3 sectors to benefit older persons and also by carrying out permanent campaigns to communicate the important contributions of this group to society.

Besides, the State has the duty to promote the Law so that the society and families respect older persons and recognize their dignity.

Through its resolutions, the Supreme Court of Justice (SCJN, for its acronym in Spanish) has protected this sector by applying the principle of equality and non-discrimination. In direct amparo under review 4398/2013, it was established that any denial of the exercise of a fundamental right motivated by a person's age is presumed unconstitutional. This justifies reinforced protection in favor of the elderly to combat, among other things, the discrimination and abandonment to which they are often subjected, since they find themselves in a disadvantaged situation compared to the rest of the population.

Besides, the SCJN determined that, although the Constitution did not contemplate an express norm that recognized the human rights of older persons, those rights derived from the principle of equality and non-discrimination, as well as from the principle of human dignity that radiates over the entire Mexican constitutional system and that conditions the interpretation of the norms. Likewise, the need to establish a reinforced protection in favor of the elderly by the State was foreseen to safeguard their interests and rights.

On the other hand, from the regulations designed for the operation of the programs in charge of the Welfare Secretariat, it is established as part of the rights of older adults: A dignified, respectful, quality, equitable and non-discriminatory treatment.

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As well as the establishment of affirmative actions that tend to value and eliminate the stereotypes that cause discrimination.

Also, the Human Rights Approach is established with the objective of generating the necessary conditions for equitable access in terms of availability, accessibility and quality in the actions carried out by the Programs, mechanisms are implemented that make access to government information effective and it is ensured that access to supports and services is given only based on what is established in the applicable regulations, in accordance with the criteria of equality and non-discrimination.

Remedies and Redress

5. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to participate in and contribute to sustainable development?

Older persons can lodge complaints and participate in sustainable development through the Social Comptroller Committees at the Institute, through which they can supervise the use of resources as well as the operation of social programs for this age group. Additionally, the INAPAM promotes their participation through the Citizen Committee, which takes part in decision making and planning of the different programs and activities of the Institute.

These two mechanisms allow older persons to participate in the processes and actions that affect them, strengthening them with their insight and perspectives towards the problems and situations that surround them.

At the same time CNDH, as the entity in charge of protecting human rights, is in charge of receiving complaints about the denial of their right to participate in and being able to seek redress for those older persons.

In claim 777/2014, in accordance with articles 25.1 and 25.2 of the American Convention on Human Rights (ACHR), the Supreme Court of Justice determined that the amparo trial constituted an effective judicial remedy to claim the unconstitutionality and unconventionality of the provisions regulations —having passed the requirements of admissibility or provenance—, in order to warn if there had been any violation of the applicants' human rights and establish, where appropriate, the corresponding reparation.

Focus area 2: Economic security

National legal and policy framework

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1. What are the legal provisions and policy frameworks in your country that guarantees the minimum essential level of the enjoyment of economic, social and cultural rights, in particular the right to an adequate standard of living?

The Mexican Constitution in its 123rd article establishes that every person has the right to a decent and socially useful job, and that the minimum wage should be enough to satisfy the normal necessities of a household, materially, socially and culturally and to provide obligatory education to their children. The standard of the minimum wage will be determined by economic activity.

Also, in Amparo under Review 750/2015, the Supreme Court of Justice of the Nation (SCJN, for its acronym in Spanish) determined that the principle of progressivity is applicable to both civil and political rights, as well as economic, social and cultural rights. This is because Article 1 of the Constitution does not make any distinction in this regard by establishing a generic obligation of all authorities to protect, guarantee, promote and respect human rights in accordance, among others, with the aforementioned principle of progressiveness. In addition, because this classic division does not really imply that there is a substantial difference between the two groups, since for their protection they not only require abstentions but also the provision of normative and institutional guarantees.

On the other hand, in the Direct Amparo in Revision 1200/2014 the Supreme Court established that the right to an adequate standard of living finds its foundation in article 4 of the Constitution. Likewise, it specified that its full effectiveness depends on the fulfillment of other rights such as health, housing, food, education, rights that make up the sphere of people's basic needs. In addition, this right is related to the principle of dignity, which is a principle that permeates the entire system and as a fundamental right, which is the basis and condition for the enjoyment of other rights. Hence, the obligation to ensure the full effectiveness of the right to an adequate standard of living falls on both public authorities and individuals.

2. How is poverty defined in the national policy framework?

Poverty is defined in the national policy as the deprivation of at least one of these indicators: access to education, to health services or to social security, housing quality and spaces, basic services in housing and access to food, and when the income is insufficient to get goods and services. The poverty can be divided into moderate poverty or extreme poverty. The first is understood when the person is poor, but not extremely poor.

Extreme poverty refers to those people who have three or more deprivations. These definitions are in accordance to the National Council for Evaluation of Social Development Policy (CONEVAL for its acronym in Spanish).

3. What are challenges faced by older persons living in poverty, including the impact of intersectional discrimination and inequality based on age, gender and other grounds?

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The main challenges faced by older people living in poverty are related to the social deficiencies they face in their daily lives, such as access to health services, access to food, access to housing quality and space and access to basic services in their homes, which, added to the discrimination due to their vulnerability, gender, and ethnicity, make their daily lives difficult.

4. What data, statistics and research are available regarding older persons living in poverty?

Given that poverty is a very important problem in the society in general, and not only between older persons, the Institutions in charge of researching and generating statistical information on older persons living in poverty are the CONEVAL and the National Institute of Statistics and Geography (INEGI for its acronym in Spanish).

There are a few reports available about poverty, such as the “Poverty and elderly people in Mexico (2018)” and the “Multidimensional Poverty Measurement Report in Mexico 2016-2020” created by the CONEVAL. There’s also the “National Household Income and Expenditure Survey (2020)” and the “Population and Housing Census (2020)”, both of them from the INEGI.

Poverty is measured by four indicators, which show that 75.7% of older persons aged 65 and over in Mexico live in poverty (moderate or extreme), 86.7% of the older persons live between 1 and 3 social deprivations (such as educational lag, housing, social security, food and health services or basic housing services) and 59.4% of the older persons have lower income than the rest of the population, according to the CONEVAL.

Progressive realization and the use of maximum available resources

5. What steps have been taken to address economic insecurity and poverty in older age and to ensure the right to an adequate standard of living for older persons?

In order to combat poverty and economic insecurity between older persons, the State has taken steps to ensure the right to an adequate standard of living, just like the Older Persons’ Rights Law mentions in its 5th article, where states that the older persons have the right to enjoy a life with quality, forcing public institutions, community, family and society to guarantee the access to programs with the objective of ensuring this right; such as the right to live in dignified safe environments according to their needs; to have access to health services, food, goods and services, and being subjects of programs of social assistance in case of unemployment or disabilities, and to get a decent home.

In judicial matters, in the direct amparo in review 1754/2015, a woman over 60 years old claimed the resolution that denied her alimony for having dedicated herself to housework, on the grounds that she had had a paid job outside her home and that received a retirement pension. Regarding this, the complainant alleged that such a decision violated her right to a life worthy of her since she could not afford the necessary expenses due to her state of health. In this sense, the Supreme

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Court established that the alimony is not incompatible with the retirement pension, since its foundation is an ethical duty of solidarity and its purpose is to put an end to economic imbalances. The important thing, she told herself, is to determine if the person is in a state of need, which was updated in the specific case given that the aging of the complainant placed her in a situation of vulnerability.

On the other hand, in direct amparo in review 53/2015, the Supreme Court analyzed the particular situation of older adults in relation to the causes of revocation of a donation. In this regard, it specified that this could only be revoked due to the ingratitude of the donator, which was updated by the commission of a crime against the donor and by the refusal to help him in the event of poverty. Based on such premise, it is possible to appreciate the situation of vulnerability of the elderly in relation to their situation of "relief" and "poverty".

6. What is the impact of macroeconomic policies on economic insecurity and poverty among older persons and vice versa? What policy options are available and/or implemented in order to expand fiscal space and maximize available resources to ensure economic security and the right to an adequate standard of living for older persons?

7. What good practices are available in terms of ensuring older persons' economic security, including through a life-course approach?

The "Pension for the Welfare of Older Persons" by the Ministry of Welfare (Secretaría de Bienestar) was implemented locally in 2001 and gradually became a federal program which provides older persons of 65 years old or more a non-contributory pension, consisting of an economic support of \$3,850 pesos delivered every two months, with the objective of contributing to the welfare of older persons.

Consequently, INAPAM contributes to these good practices through its program of productive linkage service, which promotes a gainful employment and the system of voluntary packers, that provides a source of income for older persons.

Equality and non-discrimination

8. What measures are being taken to eliminate ageism and discrimination based on age that prevent older persons to access economic and other productive resources, including financial services, land, adequate housing and the right to inheritance?

The position of the Supreme Court is reiterated in the sense that the rights of older adults derive from the principle of equality and non-discrimination, as well as from the principle of human dignity. Thus, the state obligation implies the establishment of reinforced protection in favor of said group in a situation of vulnerability, in order to safeguard their rights and interests.

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Moreover, as stated above, the INAPAM has the capacity of promoting a positive view of older persons, not only within the public sector, but in the private and social sectors as well. The main activities and procedures to accomplish this is to establish agreements with the 3 sectors to benefit older persons and also by carrying out permanent campaigns to communicate the important contributions of this group to society.

Besides, the State has the duty to promote the Law so that the society and families respect older persons and recognize their dignity.

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 economic security and enjoyment of the right to an adequate standard of living?

Older persons can lodge complaints and participate in sustainable development through the Social Comptroller Committees at the Institute, through which they can supervise the use of resources as well as the operation of social programs for this age group. Additionally, the INAPAM promotes their participation through the Citizen Committee, which takes part in decision making and planning of the different programs and activities of the Institute.

These two mechanisms allow older persons to participate in the processes and actions that affect them, strengthening them with their insight and perspectives towards the problems and situations that surround them.

At the same time CNDH, as the entity in charge of protecting human rights, is in charge of receiving complaints about the denial of their right to participate in and being able to seek redress for those older persons.

Besides, as was mentioned before, older people have found reparation for the violation of their rights through amparo.