



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

Topics: "Equality and non-discrimination" and "negligence, violence and abuse"

Guatemala, April 2017

Guiding Questions: Equality and non-discrimination

1) The Constitution or laws of their country:

a) Explicitly guarantees equality for older people or people of all ages

The Constitution of the Republic of Guatemala stated in Article 4 the principle of equality¹; Article 51 explicitly requires the state to the protection of minors and the elderly.

The Ley de Protección a las personas de la Tercera Edad² is applicable to all seniors throughout the country.

b) Explicitly prohibits discrimination based on age? If yes, how it is defined the right to equality and non-discrimination?

The crime of discrimination is punishable under the Penal Code³, Article 202a describes discrimination as "any distinction, exclusion, restriction or reference based on gender, race, ethnicity, language, age, religion, economic status, illness, disability, marital status, or any other reason, reason or circumstance that prevents or hinders a person, group of persons or associations, the exercise of statutory rights including customary law or custom, in accordance with the Constitution of the Republic and the international treaties on human rights ". (Own translation)

2. Does your country produces about discrimination against older persons in the following areas? If yes, what are the main findings?

The subject is poorly documented. Some articles, publications of organizations and information gathered by the PDH show the discrimination against the elderly. Here are some points of interest to this questionnaire.

- Job

Older people are unlikely to find a new job position, so they resort to informal work⁴. Changes in work organization and the economic environment of the country violate their access to work⁵; cases of exclusion of older people are also given, because employers consider them unfit to fulfill their duties efficiently⁶.

- Access to goods and services

¹ The Constitutional Court considers that the principle of equality in the Constitution requires that similar situations are normatively treated in the same way; however for this to be really effective also requires that different situations are treated as their differences. Constitutional Court. Gazette No. 24. Docket No. 141-92, judgment 06.16.1992. P. 14.

² Decree 80-96.

³ Decree 17-73. Such behavior is liable to imprisonment of 1 to 3 years and fine Q 500.00 (US \$ 68.12) to Q 3,000.00 (\$ 408.72 US); Also, the penalty is increased by one third for those who disseminate, support or incite discriminatory ideas in any form or medium; when the offense is committed by a public official or employee in the exercise of his office or by an individual in the provision of a public service. (At the exchange of Q 7.34 US \$ 1.00).

⁴ PDH. Contribution of the Ombudsman for Human Rights to the Office of the High Commissioner for Human Rights. Situation of older people in Guatemala in relation to the PAIME. 2015. p. 13.

⁵ For example the deleted jobs, being fired or replaced by younger people.

⁶ Prensa Libre. Revista Domingo *Perfil del Adulto Mayor*. 15.06.2014.

The State grants subsidies to employers of public transport for older people enjoy gratuity to use the service, but the fare collection persists. PDH has repeatedly pointed out the occurrence of abuse and discrimination by pilots and assistants for the elderly⁷.

- Social protection

Most elderly people in Guatemala lack access to social security. The pension system is inadequate social security⁸ and their amounts are low relative to the basket⁹.

- Social care¹⁰

Day care programs, public nursing homes abandoned¹¹ and the Programa de Aporte Económico del Adulto Mayor (Program for Economic Contribution of Older Persons) are insufficient for the demand for care of elderly people in poverty and extreme poverty¹².

- Justice

Procrastination and process costs and inaccessibility to the courts for being away from the communities are factors affecting access to justice for the elderly¹³. The Public Prosecutor has no tax agencies in all departments of the country; It is also important the creation of a Special Prosecutor for older people because the cases related are handled in the Fiscalía de la Mujer (Women Prosecutor).

3) Is there information available about inequality of opportunities and outcomes experienced by older adults, in the following areas?

- Availability of access, quality of services, health care

In the public health policy they have not been implemented comprehensive care programs for the elderly, nor have enabled geriatric and gerontological services¹⁴ at different levels of care¹⁵.

⁷ PDH. *Informe Circunstanciado Situación de los Derechos Humanos* 2016. p. 137.

⁸ PDH. *Informe Circunstanciado Situación de los Derechos Humanos* 2015. p. 155-156.

⁹ In 2014 it was estimated that people aged 60 and over amounted to 975.004, of which 7.54% (77.303) were covered with pension Guatemalan Social Security Institute⁹. In 2015 the minimum pension granted amounted to Q 340.00 (US \$ 46.32) and maximum did not exceed Q 4,800.00 (US \$ 655.74) and later that year the Canasta basic food rose at a monthly cost of Q 3,507.60 (US \$ 477.87).

¹⁰ Public policy for addressing the needs of this age group does not have a human rights approach and actions being promoted are welfare programs covering a fraction of the total elderly population, without guaranteeing dignified treatment, but conceiving as an underdog sector.

¹¹ PDH. *Informe Circunstanciado Situación de los Derechos Humanos y Memoria de Labores* 2014 and PDH. *Informe Circunstanciado Situación de los Derechos Humanos y Memoria de Labores* 2015.

¹² PDH. *Informe Circunstanciado Situación de los Derechos Humanos y Memoria de Labores* 2015. Pp. 153 and 154.

¹³ PDH. Contribution of the Ombudsman for Human Rights to the Office of the High Commissioner for Human Rights. Situation of older people in Guatemala in relation to the PAIME. 2015. p. 9

¹⁴ University of San Carlos of Guatemala. School of Social Work. Social Exclusion of Older Persons. 2009.

¹⁵ PDH. *Informe Circunstanciado Situación de los Derechos Humanos*. 2011. p. 118.

In the social security system they have been difficulties in providing services Centro de Atención Médico Integral para Pensionados (CAMIP) (comprehensive medical care center for pensioners)¹⁶.

- Financial services

They have not been identified reports on this subject however in the country older people face limited access to life insurance, medical services and financing plans for the acquisition of goods, as are viewed as potential risks that lead to losses. Also from the 60 years access to bank loans and financial transactions such as credit cards is limited.

4) Are there areas where it is explicitly justified the differential treatment based on age? Examples: access to goods, mandatory retirement age, age limits for financial products and services based on age benefits.

According to Article 30 of the Ley de Protección para las Personas de la Tercera Edad (Law on the Protection of the Elderly People), people should enjoy special treatment in the payment of essential services and enjoy certain benefits¹⁷. The Comité Nacional de Protección a las Personas de la Tercera Edad (national committee for protection of the elderly persons) (CONAPROV) is the institution responsible for ensuring compliance with these regulations; however it does not fully comply their functions which has caused limitations for older persons enjoy such privileges.

¹⁶ PDH. Defensoría de las Personas Mayores. Supervision reports CAMIP.

¹⁷ Essential services: electricity, potable water, among others. Benefits: Free State Recreation centers, special discounts on the purchase of medicines, payment of hotel, basic food items, among others. And preferred to make personal representations to the state agencies, autonomous and decentralized entities and the private sector deal.

Guiding Questions: Neglect, violence and abuse

1. In your country, there are specific studies or research (governmental, non-governmental or academic) about violence, abuse and neglect experienced by older people?

No studies have been identified and research on these issues. Nor they have developed protocols or routes to follow for care in these cases.

A) What forms of violence, abuse and neglect (eg physical, psychological, sexual, financial and others) have been registered? What scenarios occur (eg residential and nonresidential) ?; Is there information about the type of perpetrators?

According to the Instituto Nacional de Estadística (National Statistics Institute) (INE) in 2013 a total of 36.170 victims were registered, of which 1,357 were people aged 60 and over¹⁸. In 2015 the Policía Nacional Civil (National Civil Police) reported 203 murders of people aged 60 years and over¹⁹ and the Instituto Nacional de Ciencias Forenses (National Institute of Forensic Sciences) (INACIF) 145 expertises practiced elderly because of abuse-related injuries²⁰. There is underreporting because in many cases the older person does not dare to complain.

PDH has received complaints of mistreatment, discrimination, lack of access to social security, physical violence, psychological violence, social protection, access to housing, poor health services, domestic violence, lack of drugs, threats, etc.²¹. In 2015 she investigated 391 complaints related to elderly²² and 2016 were received 455 complaints, which corresponded to 10.39% of all complaints received by the institution²³.

Most of abuse of older persons occurs in the residential area and the perpetrators are often family.

B) Violence, abuse and neglect particularly affects specific groups of elderly adults? If yes, what and how?

Violence, abuse and neglect occurs against older people, and affects all social strata; even those belonging to high socioeconomic status face greater difficulty in reporting²⁴.

3) Does your national legislation explicitly refers to violence, abuse and neglect older adults? If not, what legislation applies to such issues in the

¹⁸ INE. Security and Justice Indicators. In <http://www.ine.gob.gt/index.php/estadisticas/tema-indicadores>. Accessed 4/21/2017

¹⁹ INE. Security and Justice Indicators. In <http://www.ine.gob.gt/index.php/estadisticas/tema-indicadores>. Accessed 4/21/2017

²⁰ PDH / IHRL. INACIF statistical information. December 19, 2015.

²¹ PDH. *Informe Circunstanciado Situación de los Derechos Humanos* 2010. p. 119.

²² PDH. *Informe Circunstanciado Situación de los Derechos Humanos* 2015. p. 506

²³ PDH. *Informe Circunstanciado Situación de los Derechos Humanos* 2016. p. 358

²⁴ PDH. Information provided by Defensoría de las Personas Mayores (Ombudsman for the elderly).

context of the elderly? Does this legislation sufficiently address all areas of violence against the elderly?

There is no specific legislation to punish acts of violence, abuse or neglect of older persons; such cases corresponds to the application of the Penal Code and Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar (law on the prevention, punishment and eradication of domestic violence)²⁵. Such legislation applies to the general population so it does not address all aspects of violence against the elderly.

On the other hand there is the Ley contra el Femicidio y otras formas de Violencia contra la Mujer (law against femicide and other forms of violence against women)²⁶, Which is designed to promote and implement provisions to eradicate physical, psychological, sexual, economic violence or any kind of coercion against women in which the elderly are included.

4) What legislation exists to protect the elderly, specifically against financial abuse, including abuse of inheritance?

Article 978 of the Civil Code²⁷ states that it is voidable will made under duress, fraud or fraud; this protection extends to the elderly. It has not identified any other legislation to protect seniors against financial abuse.

In 2016 Congress amended the Ley de Bancos y Grupos Financieros (law on banks and financial groups) in order to prohibit harassment and abusive collection practices by lenders²⁸; however, this applies to the general population.

²⁵ Decree 97-96.

²⁶ Decree 22-2008.

²⁷ Decree 106.

²⁸ Congress of Guatemala. News. In: <http://www.congreso.gob.gt/noticias.php?id=7420>. 27.04.2016.