

Guiding Questions: Equality and non-discrimination

- 1. Does your country's constitution and/or legislation (a) guarantee equality explicitly for older persons or people of all ages and (b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?**

The Constitution of Costa Rica, under Article 13, establishes the principle of equal protection under the law, as follows:

“ARTICLE 33.- Every person is equal under the law, and no discrimination contrary to human dignity can be practiced”

In principle, this fundamental right applies to all people, including older persons, considering discrimination based only on reasons of age is considered a violation of this provision. This has been so recognized by the Constitutional Court in its jurisprudence.

More specifically, in law No. 7935 of October 25th, 1999, the Comprehensive Law for Older Persons and *its amendments*, some dispositions are found that prohibit discrimination based on age at least in terms of labor law and create Furthermore, the law mandates the creation of an Office for the Protection of Older Persons within the National Ombudsman office. These articles stipulate:

“ARTICLE 4.- Labor Rights

Older persons will enjoy the following labor rights: (a) to be selected to any position as long as their qualities and capabilities qualify them to perform the position. They cannot be discriminated against because of their age (...)"

“ARTICLE 69.- Amendment of Law 7319

The first paragraph of Article 11 of the Law on the Ombudsperson of the Republic, Law 7319 of November 17th 1992, shall be amended, and the text will read:

“ARTICLE 11.- Special Bodies.

The Office of the Ombudsperson of the Republic will have an office within the Ombudsperson's Office for the protection of older persons and the necessary special bodies to fulfill its responsibilities and competencies. The Office of the Ombudsperson for the Protection of Older Persons will operate 24 hours a day, every day of the year, and will be in charge of overseeing that older persons are not discriminated against and the requirement of preferential treatment for older persons in the institutions of the State and in the delivery of public

services, as well as any other situation or complaint related to this sector of the population.”

“ARTICLE 70.- Addendum to Law 7302

A provision (c) shall be added to article 4 of Law 7302 of July 8th, 1992, pertaining to the Creation of a General Pension Regime, under the National Budget, of other Special Regimes and amendment of Law 7092, of April 21st, 1988 and its amendments, Law of the Sale tax. The text will read:

ARTICLE 4.-

c) A worker that fulfills the legal requirements to retire will have the freedom to exercise this right. Intimidation, discrimination or any form of pressure or harassment so that the worker retires exclusively because of reasons of age is explicitly forbidden.

Though Executive Order 38036-MP-MBSF of November 28th, 2013, the National Policy on Ageing and Old Age (2011-2021), is issued, in order to promote and protect the human rights and fundamental freedoms of older people, and to undertake specific measures that stimulate and guide an active ageing, which are to be developed by the public establishment in the 2011-2021 period (Art.1).

This policy in its strategic line: I. Strategic Line of Social Protection, Income and Poverty Prevention, contemplates actions that prohibit discrimination based on age in employment and to guarantee equality accessing employment.

Additionally, it must be indicated that Costa Rica, through the enactment of Law 9394 of September 8th, 2016, ratified the Inter-American Convention on the Protection of the Human Rights of Older Persons, thereby converting it into an international human rights instrument of obliged compliance at national level, which expressly contemplates equality and non-discrimination as principle and human right (art. 3. sec. d, art. 5).

2. Does your country produce information about discrimination against older persons in the following or other areas? If so, what are the main findings?

- **Employment**
- **Access to goods and services**
- **Health care**
- **Social care**

- **Justice, inheritance**
- **Decision-making and autonomy, living environment**
- **Other areas (please specify)**

In the “First Report on the Status of Older Persons in Costa Rica, written by the National Council on Older Persons in partnership with the University of Costa Rica in 2008, several subjects pertinent to the status of older persons are addressed¹ and directly or indirectly the topic of discrimination that older persons face is reflected, where a wide range of results were found, such as:

- Unpaid work in the family and in the community undertaken by older persons.
- Due to the type of activities and the type of income that older persons generate, they find themselves with the informal sector of the labor market, which makes their rights more vulnerable to disrespect.
- Households with older persons are more susceptible to poverty.
- The need for older persons to own their home and to have a pension.
- The needs of family support for older persons are not entirely fulfilled.
- The need for dentistry programs for older persons.
- The reduction in the mortality rate of older persons.
- The main provider of health services for older persons is the Costa Rican Social Security Institute.
- Financial support for the development of group activities for older persons is scant or nonexistent.
- Lack of exhaustive information regarding violence and abuse against older persons. Sub-registers on the topic exist.

3. Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas?

- **Availability of, access to, and quality of health care services**
- **Financial services**

There is a provision of constitutional nature that guarantees the existence of social security for all workers, including access to medical services, through a mandatory contribution by the State. The administration and governance of this scheme is the purview of an autonomous institution called the Costa Rican Social Security Institute (Art. 73) (Caja Costarricense del Seguro Social in Spanish). This entity has made extended social security to all older persons

¹ The full report can be found at ccp.ucr.ac.cr/espam/espam.html

even regardless of whether they have contributed to the regime or not. More information can be found at www.ccss.sa.cr.

The use of and access to health services is also explored in the “First Report on the Status of Older Persons in Costa Rica” as mentioned above.

In terms of financial services, specifically in terms of access to credit from private or public entities and in terms of access to preferential interest rates in housing loans, Law 7935 (also referenced above) contain regulations in Articles 3(d) and 11(i) that guarantee them. Furthermore, Law 7052, Law of the National Financial System for the Household and the creation of the Mortgages and Household Bank (BAHNVI by its Spanish acronym), in its Articles 51 and 59 create special modalities of a housing subsidy for older persons.² Nevertheless, and besides any other isolated program³, no unified, and of easy access information regarding this issue is available to older persons.

There are nevertheless, constitutional rulings in which those in charge of credit systems are obliged to adopt the necessary measures so that an old person can be allowed to reasonably guarantee a loan, through different means as a loan on debit balances⁴.

4. Are there any areas where differential treatment based on old age is explicitly justified?

Examples:

- **Access to goods**
- **Mandatory age of retirement**
- **Age limits on financial services**
- **Age-based benefits**

Law 7935, referenced above, in its article 11, establishes a series of benefits that the National Council for Older Persons must negotiate on behalf of persons 65 years of age and older. At the same time, Article 13 establishes preferential treatment for older persons in public and private institutions that provide public services.

² More information about these can be found at:

www.banhvi.fi.cr/bono/programas_especiales/adulto_mayor.aspx.

³ <https://www.bancobcr.com/personas/creditos/Credito%20Vivienda%20para%20Pensionados.html>)

⁴ http://jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Ficha_Sentencia&nValor1=1&nValor2=645807&strTipM=T&strDirSel=directo).

This preferential treatment is translated, for instance, in the exoneration of fees relating to public transportation –bus, train and ferries⁵- and the creation of special queues, differentiated queues and adequate infrastructure for priority attention of older persons in administrative offices, banks, and health services, among others.

Furthermore, the Costa Rican Social Security Institute enacted an Institutional Policy for the Comprehensive Treatment of Older Persons in 2016 that seeks to provide preferential treatment to older persons in the different services that the institution provides⁶.

In other areas, the judiciary branch has a “Public Policy to Guaranteeing Access to Justice for Older Persons” since 2008, which was reinforced in 2015, through an instruction to all judiciary offices in the country, in which it is decided that in all judiciary areas: jurisdictional, administrative and justice assistant, the services provided will be adjusted according to age specificity and the particular need of the older persons⁷.

Said measures are publicized through different media to older persons through different media, although practice shows that such practices are not in 100% of cases, being people –in some instances- unaware of their existence.

Guiding Questions: Neglect, violence and abuse

1. In your country, are there studies or surveys (from governmental, non-governmental or academic sources) on violence, abuse and neglect experienced by older persons?

As stated previously, in 2008, the National Council on Older Persons in partnership with the University of Costa Rica created the *First Report on the Status of Older Persons in Costa Rica*, which dedicates a whole chapter to the subject of abuse and negligence towards older persons. The study analyzed exhaustively the problem of violence against older persons at the national level⁸.

However, the information in that report is outdated and there is no recent study that provides an updated diagnosis on this subject.

⁵ (see Executive decrees No. 30107-MOPT from 22/01/2002, No. 36511-MOPT from 29/03/2011 y No. 37952-MOPT from 12/09/2013)

⁶ <http://presidencia.go.cr/comunicados/2016/10/junta-directiva-de-la-ccss-aprueba-politica-institucional-para-poblacion-adulta-mayor/>).⁶

⁷ Refer to: <https://www.poder-judicial.go.cr/observatoriodegenero/wp-content/uploads/2016/03/CIRCULAR-N.-207-15.pdf>.

⁸ <http://ccp.ucr.ac.cr/espam/espam.html>

2. What forms of violence, abuse and neglect (e.g. physical, psychological, sexual, financial, or other) are registered? What is the setting in which they occur (i.e. residential and non-residential)? Is there information about the types of perpetrators?

In the aforementioned report, the different types of violence that occur are registered, such as negligence, abandonment, physical, sexual and psychological violence as well as that related to inheritances. However, it must be said that the classification showed responds to the existing legislation and the ways in which violence is typified in it. Other types of violence exist that are not registered, such as institutional violence, exclusion due to economic reasons, impairment to older persons dignity and disrespect, among others.

In the report, the problem regarding the sub-registry is mentioned, however, the information received on a daily basis indicates that the violence, abuse, and negligence exists within and outside the household and in the care and attention services.

3. Does your country's legislation explicitly address issues of violence, abuse and neglect against older persons? If not, what legislation applies to such issues in the context of older persons? Does this legislation sufficiently address the full range of violence against older persons?

Since 1999, the Costa Rican Legislative Assembly (i.e. Legislative branch) promulgated Law 7935, "Comprehensive Law for Older Persons" of October 25th, 1999. This law contains a broad definition of "violence against older persons" (Art. 2) and contains a provision titled "Procedures and Sanctions," through which older persons, victims of violence, can request protective measures (Art. 57) against their abusers and, furthermore, establishes several criminal penalties including penalties of jail time, when some sort of physical, sexual, psychological, or financial abuse has transpired (Art.58-61).

Article 57 of that same law also establishes the supplementary application of Law 7586 of April 10th, 1996, Law against domestic violence and its amendments, regarding procedures and protections when older persons are victims of violence.

Additionally, through Executive Order 38036-MP-MBSF of November 28th 2013, the National Policy on Ageing and Older Persons 2011-2021 is enacted, in order to promote and protect the human rights and fundamental freedoms of older persons and adopt specific measures that stimulate and guide an active ageing that must be developed institutionally in the 2011-2021 period (Art.1).

This policy contemplated a “Strategic plan on abandonment, abuse and maltreatment against older persons (II)”, with which a proactive role of the State is pursued, in ensuring that the rights of older persons aren’t violated and in preventing abuse and maltreatment against them. It seeks counseling, technical assistance at the national and institutional level, the capacity building and continued education, the development of individual and collective capabilities for the effective exercise of the rights of older persons. The counseling and active participation of private and public entities and of society in general is geared towards the planning and management of public policies towards the abandonment of older persons (Art. 5). The plan contemplated a series of principles and actions to be carried out in order to eliminate this affliction.

Nevertheless, at the criminal level, it could be indicated that Law 7935 does not contemplate all the forms of violence against older persons.

4. What legislation exists to protect older persons specifically against financial abuse, including inheritance abuse?

Article 61 of Law 7935 contemplates the crime denominated “Exploitation of older persons” which is sanctioned by one or two years in prison, to the person that abuses of his/her power situation, let it be in act or right, of a special state of vulnerability of the older person and induces that older person to part of his/her goods, rights, or financial resources, in such a way that bring harmful judiciary effects for him/her or his/her direct dependents.

Furthermore, the law establishes that “when it is declared, in final court ruling, that in the transfer of goods, harmful exploitation for the older person has transpired, with prejudice of the criminal sanctions that correspond, the judicial sanction against the business will contemplate the invalidity of what has been acted.”

However, in terms of inheritance, no concrete dispositions exist, for example to declare indignity to inherit, when violence, abuse and maltreatment has transpired against older persons.