

Modalities of Participation of National Human Rights Institutions
COSTA RICA NATIONAL HUMAN RIGHTS INSTITUTION IN THE WORK OF
THE OPEN-ENDED WORKING GROUP ON AGING

April 26, 2017

Equality and non-discrimination

The right to equality before the law is contemplated in article 33 of the Political Constitution of Costa Rica, stating: "*Every man is equal before the law and no discrimination contrary to his dignity can be made.*" Therefore, "*it is constitutionally possible to recognize differences between persons or groups of persons, in order to provide different legal consequences for each person, under the principle that allows equal treatment of equals and unequally to unequal's*".

This right supposes the principle of non-discrimination, which constitutes the basis of the recognition of human dignity without distinction, provided that there are no reasons to justify it in a proportional, objective and reasonable manner. The principle of equality and non-discrimination takes on special force from the recognition of the specific needs of older people and from the constitutional guarantee enshrined in Article 51 of our Constitution, by providing: "*the family as a natural and fundamental element of the Society is entitled to the special protection of the State. Equally they will have right to that protection, the mother, the old man and the helpless patient*". This special protection is based on the recognition of a particular condition of vulnerability or discrimination in which the person is, either because of his age or the inability to meet his needs by his own means, resulting from an illness or a disability.

The harmonious interpretation and application of these principles confirms that differences can only be established between individuals on the basis of the criteria of reasonableness that embody a set of democratic and constitutional values which impose the obligation to justify any restriction to a right. Costa Rican legislation does not, however, there is a specific rule that clearly defines discrimination and prohibits discrimination or prohibited reasons in order to guarantee respect, protection, and compliance with and promotion of the right to equality of the people living in the territory, through the prevention, elimination and punishment of all forms of discrimination or intolerance.

The Ombudsman's Office as an institution for the defense of the rights of the inhabitants and as the NHRI has issued criteria and recommendations aimed to make visible and combat discrimination towards the elderly population, proving that discrimination is most evident in the fields of employment, health, social protection and public transport. Likewise, these persons require different treatment in the use of public services, as well as in matters related to administrative, judicial, banking, housing, and other procedures. The situation of the rights of the elderly reveals that the age of old age continues to be a reason for discrimination and that the constitutional and special legislation in force is insufficient to restore the conditions of inequality and exclusion presented by the older adult population.

Because of the above and the fact that Costa Rican reality is not alien to international mandates for the prohibition of discrimination and racism, which is why the human rights treaty bodies have indicated to the country the need to adopt the corresponding specific legislation, in September 2015 the Ombudsman's Office presented to the Special Standing Committee on Human Rights of the Legislative Assembly a draft law called "Framework Law to Combat All Forms of Discrimination".

Neglect, violence and abuse:

In November 1999, the country shows a significant advance in the protection of the human rights of the elderly through the enactment of the Comprehensive Law for the Elderly Person, N° 7935, which penalizes physical, sexual, psychological and patrimonial violence against this population. Likewise, it recognizes the application of protective measures and the procedures contemplated in the Law against Domestic Violence N° 7586 of April 1, 1996.

Despite the existence of this legislation and the abuse and mistreatment component of the National Policy on Old Age and Aging, no progress has been reported regarding the corresponding studies on the approach and attention of violence towards the elderly. Likewise, the respective complaints are difficult to quantify in the absence of a centralized information system that gathers data from the various competent administrative and judicial authorities.

It should be noted that negligence and abandonment are not typified although there are several bills that seek their penalty, given the various consultations or cases known by the National Hospital Geriatrics and Gerontology, the National Adult Council, the Costa Rican Association of Gerontology and the Ombudsman's Office, which are recorded in this regard by those affected by this form of abuse or mistreatment.

Of the consultations or registries existing in the above-mentioned entities, abandonment and neglect as a form of abuse or violence towards this population are reported in a primary way, followed by physical violence and patrimonial abuse, and mistreatment in the direct care modalities of the institutionalized population. In descending order, there are reports of violations of the right to health and lack of preferential treatment in health services.

Therefore, the Office of the Ombudsman has indicated that attention to violence against the elderly depends on the response or actions that the State defines for the satisfaction of the human rights of this population and has issued the corresponding recommendations.

In this way, the Ombudsman's Office has been recommending actions aimed at restoring the conditions of inequality and discrimination of older adults, which today motivates the promotion of a process of conventionality of the human rights of this population. We therefore welcome the opportunity to express our support for the work of the Working Group summoned for the elaboration of an International Convention on the Human Rights of Older Persons.