

## **ARGENTINA**

### **Guiding Questions for the focus areas of the IX Session of the Open-ended Working Group on Ageing: Autonomy and independence**

#### **1) In your country/region, how is the right to autonomy and independence of older persons defined in legal and policy frameworks?**

Law N° 27.360, passed in 2017, incorporated to the Argentine legal framework the Inter-American Convention on the Protection of the Human Rights of Older Persons (CIPDPM), ADOPTED BY THE Organization of American States (OAS). In this sense, in Argentina, the right to autonomy and independence of older persons is defined according to Article 7 of the Convention:

*“State Parties to this Convention recognize the right of older persons to make decisions, to determine their life plans, to lead an autonomous and independent life in keeping with their traditions and beliefs on an equal basis, and to be afforded access to mechanisms enabling them to exercise their rights”*

In Argentina, an important factor to ensure the enjoyment of the human right of older persons to autonomy and independence is based on the juridical capacity which is established in the national legal framework. In the last decade, a change occurred since the adoption of the Convention on the Rights of Persons with Disabilities (CRPD), which modified the view on the legal capacity of individuals, moving from a non-enabling approach to an enabling one. The laws on Rights of the Patient (26.529) and on Mental Health (26.657) nourished this change of paradigm. This new approach established that all persons with mental health deficiencies have the same legal capacity with regards to the rest. In this way, restrictions that substitute the will of the individual are rejected, and the need to establish support systems in order to generate mechanisms that help to exercise the legal capacity for persons in need of them are highlighted.

#### **2) What other rights are essential for the enjoyment of the right to autonomy and independence by older persons, or affected by the non-enjoyment of this right?**

With regards to other rights which are essential to the enjoyment of the right to autonomy and care, the most important ones are the right to economic security and the right to health, and the strengthening of support networks.

#### **3) What are the key issues and challenges facing older persons in your country/region regarding autonomy and independence? What studies and data are available?**

The right to make decisions, to determine life plans, and to lead an autonomous and independent life in keeping with traditions and beliefs on an equal basis, requires increased income as well as the elimination of sociocultural barriers which are rooted on discrimination on the basis of age. Therefore, promoting accessibility, as well as the elimination of cultural, infrastructural, urban, transport, and communications barriers, in all social areas, require increased efforts, particularly when it comes to

access to justice. The stereotypical image of old age associated to a disability represents a clear impediment to autonomy and independence.

In the case of care institutions, especially the long term care homes, these aspects must be strengthened, particularly when considering the restrictions to the freedom of movement, the imposition of rules, the deficiencies in the access to personal information and the omission of informed consent. Therefore, cases of mistreatment and depersonalized treatment are far too common in the health area.

Among the available studies and data, the following are to be highlighted:

The National Survey on the Quality of Life of Older Persons of 2012 (<https://www.indec.gov.ar/ftp/cuadros/sociedad/encaviam.pdf>), conducted by the National Institute of Statistics and Census (INDEC) and the National Directorate of Policies for Older Persons (DINAPAM) of the National Secretariat of Childhood, Adolescence and Family of the Ministry for Social Development. The main objective of the survey was to generate reliable data on the quality of life of people aged 60 or over.

Also on 2012, DINAPAM, together with the University of Buenos Aires (UBA), conducted a National Survey of Long Term Homes (LTH) throughout the country, whose objective was to evaluate the particularities of such homes for older persons (public, State and private homes) in order to formulate criteria for accreditation and quality assessment.

In the private sector, the Argentine Catholic University (UCA) created the “Observatory of the Argentine Social Debt”, which constitutes a program of investigation, extension and formation. In that framework, the UCA established an “Observatory of the Social Debt to Older Persons”, whose goal is to develop specific scientific knowledge on the issue of ageing (<http://www.uca.edu.ar/index.php/site/index/es/uca/observatorio-de-la-deuda-social-argentina/deuda-social-con-las-personas-mayores/>)

#### **4) What steps have been taken to ensure older persons’ enjoyment of their right to autonomy and independence?**

In the legal framework, on 2015 the new National Civil and Commercial Code was sanctioned, which on Articles 32 and 43 recognizes the right of all people to count with support systems for decision making. This implied the incorporation of the standard provided for in the Inter-American Convention and CRPD in the area of equal recognition before law and left the system of representation for decision making (insanity) only for exceptional cases. In this way, the right to exercise one’s own rights is guaranteed, providing greater autonomy and independence.

The measures taken with the aim of ensuring the enjoyment of the rights to autonomy and independence range from the economic field up to the cultural one. With regards to the economic dimension, measures to extend the coverage of the pension system (which currently covers 97% of the people of retirement age) and to improve the income of older persons have been implemented. Nonetheless, currently older persons continue to face difficulties in accessing housing loans and mortgages. Due to this, the National Administration of Social Security (ANSES) provide lines of credit of up to u\$s 3.000.

In the sociocultural field, DINAPAM and the National Institute of Social Services for Retirees and Pensioners (the biggest health insurance in the country, with more than 4.5 million beneficiaries, known as PAMI), as well as different health insurance and social services programs and provincial organisms for older persons (at the state level) implement diverse lines of action to ensure the enjoyment by older persons of their right to autonomy and independence. In this framework, some programs are to be highlighted, such as those related to the promotion of autonomy, domestic care, good treatment, the promotion of the quality of life for persons with cognitive impairment, Alzheimer's disease and other forms of dementia, therapeutic companions, socio-preventative activities and long term homes. Regarding mobility, retirees and pensioners pay a specially reduced public transport fee of 45% of the regular price. PAMI fully covers the transportation costs of all its beneficiaries upon request within or outside the jurisdiction under which the beneficiary is affiliated, according to its medical needs and the capacity of each local office.

Under the National Program for Active Ageing and Health of Older Persons (ProNEAS) of the Ministry for Social Development, training activities are conducted at the province level in order to develop the capacities of the human resources of health personnel with the aim of strengthening the health care of older persons and boosting the capacities of autonomy, independence and wellbeing. This program publishes and disseminates among older persons a "Handbook on Self-care" which constitutes a guide that includes strategies to preserve personal autonomy and independence.

#### **5) What mechanisms are necessary, or already in place, for older persons to seek redress for the denial of autonomy and independence?**

The Inter-American Convention establishes in its Article 31, on access to justice, issues such as the reasonable time with regards to the right to hearings, the adoption of provisions of procedural accommodations in all legal and administrative proceedings at any stage, ensuring due diligence and preferential treatment for older persons in processing, settlement of, and enforcement of decisions in administrative and legal proceedings, the promotion of alternative dispute settlement mechanisms, and the training in protection of the rights of older persons for personnel associated with the administration of justice, including police and prison staff.

In Argentina there's a Public Defense Office (Ministerio Público de la Defensa –MDP-), which depends of the Office of the Attorney General, and that has a "Program on Issues of Health, Disability and Older Persons" since 2012. This Program aims to strengthen the capacities of public defenders in the defense of the rights of the targeted groups and to promote public policies to raise awareness and protect those rights. The main objective of the Program is the promotion of activities oriented to the defense and protection of human rights and the reduction of the obstacles that older persons and persons with disabilities face in accessing justice, in order to achieve material equality in the exercise of their fundamental rights.

The paradigm change mentioned before in the legal framework pointed out the need to incorporate support systems, which were reflected in the new Civil and Commercial Code. According to its Article 43, support is understood as "*...any measure of legal or non-legal nature that facilitates the decision making by the person in need of such support with regards to its own person, the administration of its property and conducting legal acts in general...*". Support measures promote the autonomy and facilitate the communication, comprehension and manifestation of the will of the person in the exercise of his/her

rights. The interested person can propose to the Judge the appointment of one or more trusted persons to provide support. The Judge must evaluate the extent of such designation and procure the protection of the person with regards to potential conflicts of interest or undue influence. The resolution must establish the condition and quality of the support measures and, if needed, be registered in the Civil and Capacity Registry of Persons.

**6) What are the responsibilities of other, non-State, actors in respecting and protecting the right to autonomy and independence of older persons?**

The management of DINAPAM and PAMI programs is conducted in articulation with local governments, state governments and universities, as well as with civil society organizations, which are key actors in public management. Similarly, organizations of older persons and other non-governmental organizations work in the area of modifying the stereotypical image of older persons, old age and ageing itself.