

INPUTS FROM COSTA RICA FOR THE NINTH SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING

Guiding Questions for the focus areas of the IX Session of the Open-ended Working Group of 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?

On 8 September 2016 through Law No. 9394 , and the Executive order No. 39973 on 12 October 2016, Costa Rica ratified the Inter-American Convention on Protecting the Human Rights of Older Persons. In this instrument on article 7, the human right to Independence and Autonomy is fully recognized.

However, since 1999, Article 6 of Law No. 7935, a comprehensive Law for Older Persons regulated the right to integrity of the elderly. And since 18 August 2016, through Law No. 9379 on the Promotion of Personal Autonomy of Persons with Disabilities, the regulation sets the right to fully exercise, in equal terms, the right of people with disabilities to personal autonomy. This is a regulation that could eventually benefit the elderly.

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 this right?

Without a doubt, the right to recognise the capacity to make decisions, the right to access to justice, and the right to accesibility, as well as the right for personal mobility are pivotal for elderly people to fully exercise their right to independence and autonomy.

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

Problems: Individuals that grow old alone without supporting networks, and consequently lose their autonomy and independence. Other problems are the infantilization of elderly persons with the consequent restriction to exercise the right of autonomy and decision-making, comprehend old age as the loss of autonomy, as well as the budgetary limitations that prevent from expanding the coverage of elderly assistance and care programs, among others.

Challenges: Shift the existing paradigm around the elderly and their autonomy, expand the care programs coverage for the elderly and the creation of effective support networks for individuals, as well as achieve an effective judicial protection level for the elderly that have been subject to diminished autonomy.

4) What steps have been taken to ensure older persons' enjoyment to their right to autonomy and independence?

With the enactment of Law No. 9379 on the Promotion of Personal Autonomy of Persons with Disabilities on 18 August 2016, a new normative framework in accordance with full respect for human rights was created. This legal framework creates mechanisms to guarantee the exercise of legal capacities with the adequate safeguards for it. However, the Program for the promotion of personal autonomy for elderly individuals with disabilities has not yet been implemented.

In addition, as indicated, the Inter-American Convention on Protecting the Human Rights of Older Persons was ratified through Law No. 9394 on 8 September 2016 and Executive Order No. 39973 on October 12, 2016

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

Within the framework of articles 2, 57 and the consequent reforms of Law No. 7935 (25 October 1999), the Comprehensive Law for Older Persons, individuals can request protection measures in violence situations that prevent them from exercising their right to autonomy and independence.

In addition, Article 5 of Law No. 9379, creates the process for safeguarding the legal equality of people with disabilities to guarantee the safe and effective exercise of the rights and obligations of people with intellectual, mental and psychosocial disabilities while respecting their will and preferences, without any conflict of interest or undue influence.

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

The Costa Rican legal system does not have regulation on regards to the establishment of non-state actors responsibilities with and for the elderly persons. At most, Law No. 7935 in article 1 including subparagraph c), and article 16, establishes that the elderly person must remain integrated to their family and community without establishing specific responsibilities for example for the family members.

However, programs for elderly are implemented at community level by associations or foundations (non-governmental organizations) who are properly instructed about the respect and protection of the right to autonomy and independence of the elderly.

Guiding Questions for the focus areas of the IX Session of the Open-ended Working Group of Ageing: Long-term care and palliative care

1) In your country/region, how is long-term care for older persons defined and provided for in legal and policy frameworks? What types of support and services are covered?

The Inter-American Convention on Protecting the Human Rights of Older Persons, in Article 2 defines the "Older person receiving long-term care services" as the person who resides temporarily or permanently in a regulated, public, private or mixed establishment, which provides quality comprehensive social and health care services, including long-term facilities for older persons with moderate or severe dependency, who cannot receive care in their home.

The Law No. 7935 contemplates the existence of private centers that offer these services of long-term care, in Article 3 e), 5, 35 c), g), h), i), ñ) y r), 52 a 56, 63 to 66. On the other hand, its Rules of Procedure Executive Decree Nr. 30438-MP, Articles 3, 6, 13, 28 inc. a), b), c), j), 38 a 45, has similar regulations. Moreover, the Executive Decree No. 37165-S, "Rules of Procedure to the granting of a sanitary permit for the functioning of the long-distance long-term houses for older persons" of June 2, 2012, establishes the regulations to provide the long-term care services for older persons.

The support and services that they receive have to guarantee the protection, rehabilitation and the comprehensive incentive in a human and safe environment, where they receive care and treatments, with respect to their dignity, their beliefs, needs and intimacy, as well as the right to adopt decisions regarding their care and quality of life.

2) What are the specific challenges faced by older persons in accessing long-term care?

To have available services, accessible and affordable facilities and in a non-discriminatory and universal manner for all the older persons, independently of their socio-economic condition.

3) What measures have been taken/are necessary to ensure high-quality and sustainable long-term care systems for older persons, including for example:

- *Sufficient availability, accessibility and affordability of services on a non-discriminatory basis?*
- *High quality of services provided?*
- *Autonomy and free, prior and informed consent of older personas in relation to their long-term care and support?*
- *Progressive elimination of all restrictive practices (such as detention, seclusion, chemical and physical restraint) in long-term care?*
- *Sustainable financing of long-term care and support services?*
- *Redress and remedy in case of abuse and violations?*

It is necessary to assure the sustainable financing of the programmes developed to that effect. As well as to develop monitoring and control of the quality services, at the relevant public institutions. Furthermore, it is necessary to reassure the sustainable financing for the programmes that develop other alternatives of

attention, that not only focus on the long-term care, but also on the home-based care and in the community of the older persons that require them.

4) What other rights are essential for the enjoyment of the right to long-term care by older persons, or affected by the non-enjoyment of this right?

The right of autonomy and the capacity for action, the prior approval, free and informed when they access to the long-term care system, the right to interact with other persons, to receive information about the services and their health condition, to reject to receive experimental treatment or with excess of medication, the due diligence of the physical transfer and the causes of removal, not to be isolated, to manage their own finances, to have privacy and intimacy, to exercise their sexuality and the freedom of movement, if the conditions allow, among others.

5) In country/region, how is palliative care defined in legal policy frameworks?

With the ratification of the Inter-American Convention on Protecting the Human Rights of Older Persons, the definition is taken based on the Article 2 "Palliative Care" that states: "Active, comprehensive, and interdisciplinary care and treatment of patients whose illness is not responding to curative treatment or who are suffering avoidable pain, in order to improve their quality of life until the last day of their lives. Central to palliative care is control of pain, of other symptoms, and of the social, psychological, and spiritual problems of the older person. It includes the patient, their environment, and their family. It affirms life and considers death a normal process, neither hastening nor delaying it."

6) What are the specific needs and challenges facing older persons regarding end-of-life care? Are there studies, data and evidence available?

Costa Rica has a control network of pain management and palliative care, that it is part of the comprehensive care that the Costa Rica's Social Security System (Caja Costarricense del Seguro Social) provides to the population. One of the major needs is related to strengthen the human and economic resources in order to expand the coverage. One of the challenges consists in the improvement of the infrastructure to give a better attention, as well as the normalization and standardization of the procedures.

7) To what extent is palliative care available to all older persons on a non-discriminatory basis?

In principle, the pain management and the palliative care are part of the comprehensive attention that gives the Costa Rica's Social Security System (Caja Costarricense del Seguro Social) to the population.

8) How is palliative care provided, in relation to long-term care as described above and other support services for older persons?

The palliative care is provided through two modalities: "Hogar de Larga Estancia" and "Red de Cuido para Personas Adultas Mayor".

9) Are there good practices available in terms of long-term and palliative care? What are lesson learned from human rights perspectives?

Best practices exist in the community level, where there are 45 clinics of pain management and palliative care, long-term homes and care networks for older persons. One of the lessons learned has to do with the quality and the warmth of the attention at the end-of-life. Moreover, the strengthening of the attention based on the person-centred model, taking into account that each situation is different, therefore, the services must adjust to the reality and needs to each one of them.