

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

Mexico has not ratified the Inter-American Convention on protecting the Human Rights of Older Persons. The normative framework of the elderly is essentially set out in the Law on the Rights of Older Persons, and in the State laws, only Zacatecas has Regulatory Law to this sector, therefore, the State does not have an obligation to allocate budget specific for compliance with those laws.

### **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?***

Long-term care are those provided to elderly people residing temporarily or permanently in a regulated establishment, whether public, private or mixed, in which they receive quality comprehensive health and social services, including long-stay residences that provide long-term care services to the elderly, with moderate or severe dependency. These services are for people that cannot receive this kind of care at home<sup>1</sup>. This kind of support include prevention, treatment and pain control services, and other physical and emotional symptoms by a multidisciplinary professional team<sup>2</sup>.

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

- a) The ratification of the Inter-American Convention on the Protection of the Human Rights of Older Persons, from which a state structure could be established and has to protect effectively the rights of the elderly in all parts of the Nation.
- b) That all regulatory laws of federal states and of Law of the Rights of Older Persons (LPAM) be enacted, since then it can be demanded in legal terms from the State that the budget guarantees the rights of the growing number of elderly people, including funding for long-term care and palliative care.
- a) That long-term care and palliative care must be rights recognized by law, in the terms provided for in the Inter-American Convention, the ICESCR, and articles 1 and 26 of the Political Constitution of Mexico.
- b) To generate a National Network of Day Centers and strengthen the capacity of the health sector at the primary level to provide a continuous range of services throughout the life cycle. To be considered the sensitization and awareness on the subject to the

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<sup>1</sup> Inter-American Convention on protecting the Human Rights of Older Persons. Art. 2

<sup>2</sup> Ley General de Salud Art. 33 fraction IV .

whole population. (*Aging and health: a proposal for an action plan*) Available in spanish

[http://www.geriatria.salud.gob.mx/descargas/publicaciones/Envejecimiento\\_y\\_salud\\_3a\\_edicion.pdf](http://www.geriatria.salud.gob.mx/descargas/publicaciones/Envejecimiento_y_salud_3a_edicion.pdf).

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

The availability, accessibility and feasibility of long-term care services on a non-discriminatory basis, exposes the aspect related to access to public health as a dependent of the formal work aspect. There is lack of access, for example, when working in an informal manner, or as an employee under the regime of "not assimilated", or when there has not been paid work. Older people likely to be vulnerable will require care such as social housing,

- *Census of Social Assistance Accommodation (CAAS), 2015.* (Available at:[http://www.inegi.org.mx/saladeprensa/boletines/2015/especiales/especiales2015\\_12\\_39.pdf](http://www.inegi.org.mx/saladeprensa/boletines/2015/especiales/especiales2015_12_39.pdf)).
- *Public Policy for Attention to the Elderly. Superior Audit of the Federation of the Chamber of Deputies. July 2016. Mexico.*

Regarding the Census, the objective is to generate statistical information on the living conditions of this population, the services received by the beneficiaries, their sociodemographic characteristics, and those of the workers: total of registered units 4,518; from these, 96.1% percent reported with user population; 3.9% in operation but without users. Total population hosted by the Census 118,904 users, 64 % men and 36% women. Total of workers: 55,455 (64.7% women and 35.3 % men); 31,060 people works without pay; 9,406 works in Social Assistance Housing Centers (CAAS) against addictions, 58.3 % received donations from individuals, and 57.6% obtained resources for charging fees to users or their families. From total *Social Assistance Accommodation (CAAS)*, 19.5% were for older people.

In those CAAS, housing and labor competences of workers, the Census reports that the average education of 55,455 workers is 12 years. Also, 98.1% provides feeding; 86.3% has medical assistance; and 81.1% has group therapies; in every 8 of 10 there are recreational activities, religious orientation and medicines, and only 7 out of 10 give psychological support.

About autonomy and free consent of the elderly, on the medical treatments offered to them, there is respect. In Mexico City, the Law of Advance Will for the Federal District, establishes norms that regulate the granting of the will of a person with

exercise capacity, so they express their decision to be submitted or not to measures, treatments or medical procedures that intend to prolong their life when they are in terminal stage and, based upon medical reasons, it is impossible to maintain them in a natural way, protecting at all times the dignity of the person. There are other laws in this matter in several States of the Mexican Republic.

Compensation and reparation for abuse and violation of the Rights of the elderly: the General Law of Victims recognizes and guarantees the rights of victims of crime and human rights violations, establishes and coordinates the actions and measures necessary to promote, respect, guarantee and allow the effective exercise of the rights of victims; as well as implementing mechanisms so that the authorities comply with their obligations, to achieve comprehensive reparation; guarantee the effective exercise of the victims' right to justice. There are correlatives laws of Federal Entities, for example, the Law of Attention and Support to the Victims of Crime for the Federal District, that contemplates the right to be informed of their rights that the Political Constitution of Mexico and other regulations establish, to be attended and treated according to their age and psychosocial state; that public servers treat victims with care and respect due to their human dignity; to request that the Public Ministry repair the damage; to restore their rights when they are accredited; to non-discrimination by age or disability or health condition.

**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?**

Article 5 of the *Law of the Rights of the Elderly*,

- a. A life with quality
- b. To the full enjoyment, without discrimination or any distinction, of the rights that this and other laws consecrate
- c. To a free life without violence
- d. Respect to their physical, psycho-emotional and sexual integrity
- e. To protection against all forms of exploitation
- f. To receive protection from the community, family and society, as well as federal, state and municipal institutions
- g. To live in decent and dignified safe environments that include their needs and requirements and where they can freely exercise their rights
- h. ...
- i. To receive support of federal, state and municipal institutions in the exercise and respect of their rights
- j. ...
- k. ...

- l. Access to necessary satisfactions, considering food, goods, services and human or material conditions for their integral attention
- m. Preferential access to health services, in accordance with the third paragraph of article 4o. Constitutional and in the terms indicated in article 18 of this Law, in order to fully enjoy the right to their sexuality, physical, mental and psycho-emotional well-being
- n. Receive guidance and training in health, nutrition and hygiene, as well as everything that favors their personal care. Families will have the right to receive subsidiary support from public institutions for the care and attention of older adults
- o. Equal opportunities in access to work or other options that allow them to have their own income and perform as productively as long as they wish, as well as to receive protection from the provisions of the Federal Labor Law and other legal systems of labor nature
- p. Enjoy social assistance programs in case of unemployment, disability or loss of their means of subsistence
- q. Access to programs for decent housing adapted to their needs
- r. Access to programs for a home or refuge, or other alternatives for comprehensive care, if they are in a situation of risk or distress.

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

General Health Law, art. 33, fracc. IV

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

- Lack of access to health services
- *Public Policy for Attention to the Elderly. Auditoría Superior de la Federación de la Cámara de Diputados. Julio 2016. México, pág. 190-191.*

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

The lack of affiliation to the IMSS (Mexican Institution of Social Security) or ISSSTE (Social Security Institution for State Workers) or labor informality, among others, are factors directly related to poverty, and those people is discriminated against access to palliative care.

Due to the lack of a pension or access to work, the elderly can be economically dependent and they are on a vulnerable situation, without access to palliative care.

In 2013, 6.1% of older people are pensioners, 40.9% of these, are retired, 33.9% retirement or old age, 17.5% widowhood and 3.6% for accident or occupational

disease. (Data from the National Survey of Employment and Social Security, ENESS, 2013).

73.2% works informally and require State or family support for their palliative care and the number of women in this condition is bigger.

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

The access to palliative care or comprehensive care for terminally ill patients, by the State, depends on whether they have been affiliated to IMSS or ISSSTE, or if they have joined by themselves the Popular Insurance that is other form of support in terms of the Right to Health. If the elderly person does not have any of these health services provided by the State, they will have to pay at their own expense, or their family, a private medical attention and private hospitals, they won't have support on behalf of the State. Therefore, long-term care is related to palliative care, as well as to other support services.

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

- NORMA Oficial Mexicana NOM-011-SSA3-2014, Criteria for the care of terminally ill patients through palliative care. (available in [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5375019&fecha=09/12/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5375019&fecha=09/12/2014)).
  - AGREEMENT in which the General Health Council declares the Obligatory of Comprehensive Palliative Care Management Schemes, as well as the processes outlined in the Comprehensive Palliative Care Management Guide, supplemented with the Guide to Comprehensive Palliative Care Management in the Pediatric Patient. (available at [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5377407&fecha=26/12/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5377407&fecha=26/12/2014)).
  - Incorporation of palliative care in the General Health Law as an integral part of the right to health.
  - Certification process for public servers assigned to health institutions.
  - Making a directory of long-term care institutions.
  - Making and monitoring the National Palliative Care Program. [http://csg.gob.mx/descargas/pdf/index/cuidados\\_paliativos/2017\\_08\\_03\\_Cuidados\\_Paliativos.pdf](http://csg.gob.mx/descargas/pdf/index/cuidados_paliativos/2017_08_03_Cuidados_Paliativos.pdf)
- The lessons learned from a human rights perspective:
- From the workshop for carers and the training for a dignified treatment, we have learned that the perspective of rights in each action, the programs and public policies

regarding long-term care and palliative care makes possible access to the other rights of the elderly person and their families.

## **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?**

Autonomy and self-realization are all actions that are carried out for the benefit of the elderly, aimed at strengthening their independence, their decision-making capacity and their personal and community development. (Articles 4 and 5, Law of the Rights of Older Persons LPAM).

### **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?**

*Supra. Answer # 4 Long-term care and Palliative care*

### **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?**

Regarding the health issue, INEGI mortality statistics in 2015 show that the main causes of death among the population over 60 years old are diseases of the circulatory system (32.5%); endocrine, nutritional and metabolic registered a percentage of 86.3% of affiliation to health services and the people who died in that year, 15.8% were not affiliated with any health service.

Data from the CONEVAL (National Council for the Evaluation of Social Development Policy in Mexico) estimate that in 2016, 41.1% of the population over 65 lived in poverty, of which 34.6% suffered moderate poverty and 6.6% extreme poverty. About disability, 3.4 million older people have some disability, and 4.7 million are limited, 56.4% work on their own, 18.1% are employees and 13.7% are not paid.

The limited population: 52.9% work on their own, 22.6% are employees and 11% work without payment.

OECD has estimated that in 2015 La OCDE estimó que in 2015, the public expenditure of the Mexican State destined to the pension system was 1.9% of the national GDP, while the average of the countries is 10.3%.

About education, 80.5% of people over 60 years can read and write, and the average level of schooling was 5.4 years, it means it did not cover the years of basic education.

**Challenges:**

- To establish an appropriate legal framework to support state action, which should incorporate the contents of the Inter-American Convention on the Protection of the Human Rights of Older Persons (CIPDHPM).
- Approval and publication of the National Gerontological Program with a Human Rights Perspective, which has been prepared with the collaboration of Government Organizations and Civil Society.
- Conclude the process of ratification of the Inter-American Convention on the Rights of Older Persons, with the purpose of complying with the mandate contained in Article 1 of the Political Constitution of Mexico, regarding the obligation to promote, protect and guarantee the human rights of all people, according to the principles of universality, indivisibility, interdependence and progressivity;
- To intensify the efforts for the dissemination of the Convention through infographics, social networks, in order to make it known among the population and the public, social and private sectors.
- Harmonize the legal framework on the rights of older people, from the perspective of rights, gender approach, recognition of the right to preferential treatment and the principle of non-discrimination, in whose process it is essential to consult this sector of the population.
- Guarantee access to justice for the elderly, through actions in which the reform of the criminal justice system must include respect for the human rights of this social group.
- Training of the staff of State Prosecutors and public prosecutor's offices in the Mexican Republic about human rights and prepare specialized care protocols for older persons from a comprehensive perspective of protecting their rights.
- Develop training programs, awareness and best practices for public servers, medical personnel, caregivers and members of families in order to provoke a cultural change towards the revaluation of the elderly.
- Continue making disaggregated information of the elderly as a target population of public policies at State level in order to allow knowledge about their health, integrity, economic and social conditions, to adopt timely prevention measures and guarantee an adequate quality of life in each stage.
- Promote a culture of intergenerational coexistence that implies transfer of knowledge and experiences of older populations to young populations, so the young population prepare themselves for their adulthood and, at the same time, strengthen solidarity between generations.

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

CNDH promotes a culture of respect and dignified treatment towards the elderly, which stimulates its revaluation and full social integration, as well as the greater sensitivity, social conscience, respect, solidarity and coexistence between generations, in order to avoid any form of discrimination or abandonment because of age, gender, physical condition, social status, or any other that prevents the enjoyment of their rights.

In terms of prevention, lectures, conferences, courses, workshops, forums, joint to authorities, civil society and with the human rights defenders of the states, are held in order to make visible the rights of the elderly. In general, some topics addressed are:

*Decent treatment for the elderly; Workshop for carers; Protection of Families in international human rights instruments: their work in the formation of human rights for their members and their responsibility towards the elderly; The Right of Families to live without violence; Actions to eradicate violence and discrimination against the elderly.*

Working meetings with public organizations, civil society, the elderly and their families; for example, we participate in the Working Group on Aging, led by the National Population Council and the National Institute of Geriatrics, as well as in sessions of the National Council for Inter-institutional Coordination of Older Persons, presided, by the National Institute for Older Adults.

The Secretary of Foreign Affairs was exhorted to complete the consultation process for the signing and ratification of the Inter-American Convention on the Protection of the Human Rights of Older Persons, in order to expand the legal framework for the protection of this sector of the population.

Several documents have been issued in order to provide diagnoses of the situation regarding the human rights of the elderly and proposals for prevention of violations of their rights:

- *Special report on elderly people in penitentiary centers of the Mexican Republic*
- *Diagnosis of the National Commission of Human Rights, as a member of the working groups that follow the procedures of Alert on Gender Violence against Women (AVGM)*
- *Study on Equality of charges and salaries between Women and Men in the Federal Public Administration.*

In order to make the fundamental rights of the elderly known among population, the Law on the Rights of Older Persons is disseminated, and various materials containing information on the following aspects:

- Shared family responsibilities
- Eradication of Violence against the Elderly

- Respect for different masculinities
- What is family violence and how counteract it? All human beings are born free and equal in dignity and rights
- The human rights of the Elderly
- Families and their Legal Protection
- Promote solidarity among Generations

Complaints are received and investigated for violations of their human rights, while providing legal guidance on issues of alimony, divorce, sexual, psychological, physical and/or economic violence; discrimination, social support, among others.

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

In Mexico the Law on the Rights of Older Persons, ordered the creation of the National Institute for Older Persons (INAPAM). In accordance with this Law, these Institutions have the obligation to contribute to guarantee and protect the human rights of the elderly, each one through various mechanisms, for example (article 16 to 22):

The Ministry of Social Development must encourage participation of social and private sectors in promoting, monitoring and financing the care programs for the elderly; establish collaboration agreements with public, social and private institutions and organizations for care actions for the elderly, and the signing of international agreements on the care of this sector.

The Ministry of Public Education must guarantee access to public education in all its levels and modalities and to any other activity that can contribute to the intellectual development of the older people and that allows them in constant learning and training for its personal fulfillment.

The Ministry of Labor and Social Welfare, must implement programs that promote jobs and paid work, lucrative or voluntary activities, according to their trades, skills or profession.

The Ministry of Communications and Transportation, promotes the signing of agreements with land, air and maritime transport companies national and international to give them preferential rates, and that in public transport, in addition, there is equipment to make the service safe and secure. Also Institutions that promote housing of social interest promote programs that make possible to obtain accessible credits for older people.

The Ministry of Tourism encourages older people to participate in tourism-related activities, particularly those related to culture and history. The System for the Integral Development of

the Family (Sistema para el Desarrollo Integral de la Familia), provides assistance services and legal guidance for situations of risk or helplessness, with the option of incorporating them into the family nucleus or sheltering them in appropriate institutions, cooperates with the Attorney General's Office and the Attorney's Offices of the states in their attention and legal protection when they are victims of crimes.

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

Families and civil society must promote and respect the rights of older persons, as well as differential treatment that should be granted to them, based on the needs and attention they require. Protection of their rights to independence and strengthening of their autonomy; permanent care; no discrimination based on age, occupation, disability or any other condition; no violence; intergenerational solidarity, and collaboration equally in housework.