

Defensoría del Pueblo de Ecuador

Dirección Nacional de Investigación e Incidencia en Política Pública

Cuestionario sobre Envejecimiento

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Questionnaire about Ageing

In attention to your communication inviting National Human Rights Institutions to provide contributions regarding two specific topics about rights of older persons, that is a) equality and discrimination and b) Neglect, violence and abuse, the Office of the Ombudsman submit the following information.

In case further information is required please contact Ec. Sebastián Insuasti, National Director of Investigation and Incidence on Public Policy (rinsuasti@dpe.gob.ec)

Introduction

I. 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?

Rights of older persons and the correlative obligations of the State are determined in the current Constitution of the Republic of Ecuador (2008), in its articles 36, 37 and 38; as well as in the “Ley del Anciano”¹.

According to this normative, the State should protect older persons and guarantee them the right to health, food, medical assistance and all the necessary services for life with dignity.

Regarding the National Plan for Good Living 2013-2017, , agendas for equity consolidate policies guidelines for the inclusion of women, persons with disabilities, indigenous peoples and nationalities, children, older persons on human mobility situation, among others, and shall be integrated to National Plan for Good living.

b) Forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

Ecuadorian Constitution in its art. 11.2 recognizes that all persons are equal and are entitled to the same rights, duties and opportunities. As well as ratified the prohibition of discrimination on the basis of age. The Constitution states that law shall sanction all forms of discrimination. Furthermore, Constitution determines the State's obligation of adopting affirmative actions that promote substantial equality in favor of those who are in situation of disadvantage.

¹ Law of older persons

Regarding the definition of right to equality and non-discrimination, the Ombudsman's Office, as the National Institution of Human Rights, conceived equality and non-discrimination as an essential principle for the fulfillment of all human rights. At the same time, the respect and fulfillment of human rights represents effective mechanisms to reduce discrimination and violence. Therefore, the Ombudsman's Office has established as one of its working themes "Equality and Discrimination", which implies that the Institution conducts direct and coordinated work social collectives and groups of priority attention, such as older people. The Defensoría del Pueblo has concerted a roadmap with the collective representative of older people, which has included important initiatives. For instance, the institution presented to the National Assembly a bill draft, consisting in a new law for older people from a human rights approach.

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, social protection, health care, social care, justice, inheritance, decision-making and autonomy, living environment, other areas)

Ecuador does not produce specific information regarding discrimination against older people. However, it compiles information respecting social indicators. The main source of information is the Population and Housing Census, which takes place each 10 years. Last census was performed on 2010.

In 2012, in Ecuador there were 940.905 persons older than 65 years, which represented 6.5% of the national population. The projection is that by 2050 the 17% of population will be older than 65 years old, and by 2075 the percentage will be 26%.

Overall, socio economic conditions of older persons are precarious. Indeed, more than half of this population group -57,4%-, which means that 53.7421 persons live in poverty and extreme poverty conditions. Besides, rural areas are the more critical, as 8 out of 10 older persons live in these conditions. One of the reasons for this situation is the difficulty to generate income, since there are not job opportunities adequate to conditions of older persons. Therefore, the probability of being part of the economically active population decreases. (MIES, 2012)

According to the Epidemiological Vigilance System of the National Health Plan, in 2010 only 33% of older persons are entitled to any health insurance coverage (MIES, 2012). In the same sense, according to the National Institute of Statistics and Census (INEC, 2010), only 24,661% of the population it was affiliated to the Social Security National Institute. Finally, 23% of older persons have permanent disability (MIES, 2012).

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 no information available

4) Are there any areas where differential treatment based on old age is explicitly justified? For instance: access to goods, mandatory age of retirement, age limits in financial services and products, age-based benefits.

The Constitution of the Republic states that older persons are entitled to priority attention in the public and private sector. In this context, recognizes as rights of older persons with specific content in attention to their conditions, the following:

- a) Health an attention free and specialized (geriatric and gerontological attention)
- b) Remunerated job
- c) Remunerated work
- d) Reductions in public and private services
- e) Tax exemptions
- f) Exemptions on notary and registry fees
- g) Access to housing that guarantees the right to an adequate standard of living, respecting their opinion and consent.

II. Negligence, violence and abandonment

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

In 2009, took place in Ecuador the first Survey about Health, Wellbeing and Ageing (SABE) 2009-2010 aiming to “determine demographic characteristics, cognitive development, health conditions, use of medicaments, access to services, (health insurance, medical consultation, medicaments, hospitalization, prosthesis, odontology, among others), conditions of housing, network of social and familiar support, work history, source of income, anthropometry and exams of functionality, 60 years old or older people who live in Ecuador” (Freire, 2010).

This study exposes some of the abuses forms suffered by older persons, such as threat of physical injury, verbal offences, forced sexual relations, treat of being conducted to asylum., etc. (Freire, 2010).

In the same vein, the study regarding “Children and Adolescents from intergenerational approach, Ecuador 2016” analyzes vulnerability of older persons, among them, different forms of violence (physical, psychological and patrimonial) exercise by their relatives. (Observatorio Social del Ecuador, 2016, p. 173).

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

Respecting cases of human rights violations of older persons, within the last five years, the Ombudsman’s Office has processed 2018 cases, according to the following detail: a) 111 in 2012, b) 542 in 2013, c) 491 in 2014, d) 664 in 2015 and e) 210 in 2016.

Province	Facts	Results of intervention
Pichincha	An older woman worked as domestic employee. In her job she was victim of violence and her labor rights were not recognized. Besides, her employers obtained loans using her name.	After the National Council for Intergenerational Equality informed about the possible violation of the rights of an older woman, Pichincha Delegation of the Ombudsman’s Office coordinated interinstitutional working mechanisms, aiming to protect the rights of this person, belonging to a group entitled to priority attention. The Ombudsman’s Office coordinated actions with Ministry of Economic and Social Inclusion, National Police, and National Council for Intergenerational Equality, in order to rescue the person from its employers home and allocated her in a temporal shelter, guaranteeing her security. Likewise, thanks to the interinstitutional work it

		was achieved a legal compensation, as well as the payment of the loans ² .
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Cases related to health

Province	Facts	Results of intervention
Guayas-Naranjito	Older person, older than 85 years old, deaf, was denied assistance at the Hospital of Naranjito. The Ombudsman's Office intervened in order to obtain health attention for the older person.	The Ombudsman's Office exhorted the Director of the Hospital to guarantee attention to older persons ³ .

Cases related to asylums for older persons

Province	Facts	Results of intervention
Imbabura	By means of a newspaper, it has come to the knowledge of the Ombudsman's Office the decease of an older person, due to the lack of care in a center for older persons.	Ombudsman's investigation in course ⁴
Santo Domingo de los Tsáchilas	It has come to the knowledge of the Ombudsman's Office a case of sexual abuse of and older women, whose relatives are unknown and does not speak. The Ombudsman's Office intervened in order to investigation the situation from an integrated	Ombudsman's investigation in course ⁵ .

² Defensoría del Pueblo, Informative gazette, available on <http://www.dpe.gob.ec/se-tutelo-derechos-persona-adulta-mayor-violentada-empleadores/>

³ Ombudsman's investigation 1175-2016

⁴ Ombudsman's investigation 519-2015

⁵ Ombudsman's investigation 810-2016

	<p>approach, because the alleged perpetrator lives in the same place than the victim, and is an older person himself. Besides, he is serving an alternative penalty of deprivation of liberty. In the same investigation it was required information about other asylum for older persons without financial public support.</p>	
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2) (b) Does violence, abuse and neglect particularly affect specific groups of older persons? If so, which groups and how?

According to statistic data reported by INEC, specifically Survey about Health, Wellbeing and Ageing, one of the main groups victims of violence and abuse are older persons.

This study concludes that “7.2% of older persons have received threats of physical injury (6.9% men and 7.3% women); 4,3% of men and 5,4% of women have been pushed, 14,7% of older persons have been insulted, 3,0% of older persons have been forced to have sexual relations, 2,2% of older men and 2,4% women older have received the threat of being conducted to an asylum; and 14,9% live in negligence and abandonment” (INEC, 2010).

In the same vein, the study performed about “Children and Adolescents from intergenerational approach, Ecuador 2016” states that the 3% have suffered physical violence, 13% psychological and the 3% patrimonial violence by their relatives. (Observatorio Social del Ecuador, 2016, p. 173)

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?

Art. 38 of the Ecuadorian Constitution determines that the State shall establish public policies and programs for specialized attention to older persons. Particularly: a) attention in specialized centers that guarantee nutrition, health, education, diary care, within the framework of integral protection of rights; b) Especial protection against all forms of

violence, mistreating, sexual exploitation or any other exploitation or negligence that causes that kind of situations, among others.

Additionally, there is the Law of Older Persons in force since 1995, which determines that older persons have the right to live with dignity. This encompasses a respectful treatment and preferential attention provided by the State.

Hence, according to the Law of Older Persons, the following acts are considered infractions:

- a) Abandonment of older persons by those legally obligated to protect and take care of them, in relation to art. 11 of the present law
 - b) Mistreating by relatives or private actors
 - c) Lack or inadequate attention by public or private institutions determined in the present law
 - d) Verbal or de facto aggression, by relatives or third persons
 - e) Lack of care by relatives or persons in charge, regarding housing, food, diary subsistence, medical assistance, and security;
 - f) Disregard, denial, negligence or delay in which incur public officers, legal representatives or medical center's owners when providing assistance to older persons, especially regarding art. 14 of the present law.
 - g) Non-compliance with art. 15 of the present law in which may incurred air and ground transport entrepreneurs, artistic business, sport, recreational or cultural centers.
- 4) What legislation exists to protect older persons specifically against financial abuse, including inheritance abuse

There is no specific legislation that protects older persons in this regard. However, older persons can be victims of crimes against property by relatives or third persons. For instance, when are deceived or forced to sign documents that that compromise their economic resources or goods, when their personal documents or objects are subtracted, when their goods or assets are destroyed, retired or limited. For those cases, Ecuadorian criminal Code prescribes in its art. 187:

Art. 187.- Abuse of confidence.- The person that disposes, for herself or a third person, of money, goods or assets giving to her with the condition of restitution or a determined use, shall be punished with three years of prison. Same punishment shall be imposed to the person that, using other's person sign, on a blank document, issue with the firm a document that affects the owner of the firm or a third person.

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