

CONTRIBUTIONS OF THE PAN AMERICAN HEALTH ORGANIZATION (PAHO)

QUESTIONS AND ISSUES FOR CONTRIBUTIONS TO SECRETARY GENERAL REPORT PURSUANT GENERAL ASSEMBLY RESOLUTION 65/182

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- 1) Particular challenges that older persons face in the Region of the Americas are intrinsically related with the following human rights: the right to a dignified life; the right to personal integrity (including mental integrity); the right to security of person; the right to equal protection of the law; the right not to be discriminated against; the right to freedom of expression (especially in the context of long term care facilities); the right to judicial protection; the right to judicial guarantees and the right to the enjoyment of the highest attainable standard of health (right to health)¹.

Challenges and threats to the aforementioned human rights exist in private and governmental institutions; private and governmental community based services; private and governmental residential programs and prisons. A particular concern in long term care facilities for older persons include the lack of monitoring and understanding of the international norms and standards (such as the Siracusa Principles) to limit/restrict human rights in the context of older persons as enshrined in the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

Gaps, challenges and threats to the exercise and full realization of the aforementioned human rights within those institutions and programs include the following:

- a) **The right to a dignified life and personal integrity:** Challenges and threats include lack of measures in national policies and laws to protect older persons in long term care facilities, residential programs and prisons against arbitrary seclusion, restraint, malnutrition, sexual and financial abuse, physical abuse by personnel, abandonment of older persons in beds under physical positions that affect physical disabilities or cause wounds, lack of availability of clean and potable water, lack of adequate food or essential goods to take care of their hygiene (towels, toilet paper, soap, etc.)².

¹ Guía Clínica para Atención Primaria a las Personas Adultas Mayores, Organización Panamericana de la Salud (OPS), Promoción de la Salud y Envejecimiento Activo, Serie de Materiales de Capacitación Número 1, Tercera Edición 2003, p. 119 y 120 [Primary health care guide for older persons, Pan American Health Organization (PAHO), Health Promotion and Active Ageing, Capacity building modules No. 1, Third Edition, 2003.

² Id.

- b) **The right to mental integrity:** Threatening and intimidation of older persons by personnel in long term care facilities and residential programs with words or gestures, existence of deplorable conditions in rooms and abandonment of older persons in bed (in occasions tied to beds and/or locked up).
- c) **The right to security of person:** Lack of procedures for facilitating the participation and informed consent of older persons in the decision making process related to treatments and participation in medical/scientific experimentation; lack of specific procedures in national law to review periodically any decision referring to lack of legal capacity and/or appointment of a personal and legal representatives as a consequence of incapacity.
- d) **The right to equal protection of the law:** Lack of procedures in policies, plans and laws that allow older persons to participate in committees within long term care facilities, residential programs and community based services to exercise their fundamental right to make decisions according to their own preferences guaranteeing their autonomy and freedom of movement.
- e) **The right to freedom of expression:** Lack of specific procedures in policies, plans and laws with regard to communication with personnel (including health personnel and social workers), to receive uncensored private communications, to communicate with counsels and/or personal representatives, to access postal and telephone services, newspapers, radio, television and other means of communication.³
- f) **The right to judicial protection and judicial guarantees:** National laws in the Americas, for the most part, have not included specific procedures to review periodically the appointments of personal representatives of older persons, guardianships, admissions procedures to residential programs, to conduct hearings before review bodies and present appeals to any decision before Ombudspersons and national courts with all judicial guarantees as established by international human rights law⁴.

³ Plan of a Action on the health of older persons including active and healthy ageing, Technical document CD49/8, Directing Council, Pan American Health Organization (PAHO), 2009.

⁴ Id.

g) **The right to health:** The majority of national constitutions of the Americas guarantee the right to health and/or the right to the protection of health. However, in the context of older persons most of the laws and policies on the health of older persons, including active ageing, have not included and/or implemented essential elements of the right to health as protected by the UN Covenant on Economic, Social and Cultural Rights, the Protocol of San Salvador and other regional instruments. Some of the particular challenges to the right to health in the Americas in the context of older persons include:

- Availability, accessibility, affordability and good quality of primary health care services, long term care, community based facilities and goods;
- Lack of comprehensive health policies to preserve the health of older persons in a manner consistent with international human rights instruments, including prevention, rehabilitation and care of the terminally ill;
- Few national plans and strategies on healthy and active ageing that guarantee basic shelter, essential food, sanitation, potable water and essential medicines;
- Lack of legal frameworks and implementation to monitor the right to health and other related human rights in long term care facilities;
- Lack of national programs to train relevant workers and institutions such as the judiciary and parliaments on the human rights of older persons;
- Lack of specific measures in law and policies to regulate the delivery of care in long term care facilities for older persons with special attention to measures to guarantee their autonomy, care to the terminally ill and chronic patients; and
- Lack of specific measures in law and policies to avoid pain and provide palliative care that allow the terminally ill to die with dignity⁵.

It is important to take into account the above mentioned gaps when analyzing questions with regard to the situation of national policies, plans and laws as framed by the OHCHR in the present questionnaire⁶.

⁵ “Health and Human Rights” concept paper, Technical document CD50/12, Directing Council, Pan American Health Organization (PAHO), 2010.

⁶ Observations with regard to national policies, plans and laws in particular countries is based on both, PAHO’s visits to Member States and information provided in capacity building workshops and information available in ECLAC publication “Ageing and the protection of human rights: current situation and outlook”, United Nations, March 2011.

- 2) Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Dominican Republic and Venezuela have national laws that protect some human rights of older persons however none of these laws have addressed the above mentioned gaps (see paragraph 1, above).

- 3) Argentina, Brazil, Colombia, Canada, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Dominican Republic, the United States and Venezuela have national laws that prohibit discrimination; however, except for Canada and the United States, provisions are very general and do not protect older persons against discrimination under the right to equal protection of the law in areas such as: education, employment, standards on maximum age of prisoners, care to terminally ill, palliative care, legal capacity and review of guardianships, legal and personal representation and informed consent to treatment/research.

- 4) Argentina, Brazil, Colombia, Canada, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Dominican Republic, the United States and Venezuela have national laws that prohibit violence against older persons; however, most of the laws and policies in Central, South America and the Caribbean do not include specific protection against violence in the following areas: violence and inhuman/degrading treatment in private long term care facilities and residential programs, violence in prisons, violence against LGTBI older persons, measures to avoid seclusion and restraint, malnutrition, abandonment of older persons in bed and specific measures to avoid unnecessary pain.

- 5) Canada, United States, Costa Rica and Dominican Republic have laws and policies that guarantee human rights in long term care facilities and primary health care settings. However, most of the countries of Central, South America and Caribbean do not have policies and laws that guarantee the following elements of the right to health and freedom of movement: primary health care services, long term care, community based facilities and goods; comprehensive health policies to preserve the health of older persons in a manner consistent with international human rights instruments, including prevention, rehabilitation and care of the terminally ill; monitoring mechanisms of the right to health and other related human rights in long term care facilities; national programs to train relevant workers and institutions such as the judiciary and parliaments on the human rights of older persons; and specific measures in law and policies to regulate the delivery of care in long term care facilities for older persons with special attention to measures to guarantee their autonomy, care to the terminally ill and chronic patients; and lack of specific measures in law and policies to avoid pain and provide palliative care that allow the terminally ill to die with dignity.

- 6) Argentina, Brazil, Colombia, Canada, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Dominican Republic, Venezuela, the United States have laws that guarantees the right to work of older persons. Argentina, Brazil, Canada, Costa Rica, El Salvador, Mexico and the United States have specific laws that protect the right to Social Security. Most of the Constitutions of the Americas have general provisions on the right to social security.
- 7) No information available.
- 8) No information available.
- 9) Most of the national constitutions of North, Central, South America and the Caribbean protect the right of every person to judicial protection and judicial guarantees through general provisions; however, except for the United States and Canada no country of the Americas have established specific provisions to protect the right to judicial protection and judicial guarantees of older persons in the following context: periodic review of guardianships, periodic review of the appointments of personal representatives, review of admission procedures to residential programs (voluntary and involuntary admissions), presentation of appeals related to property rights.