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# ON THE RIGHTS

OF THE ELDERLY IN ECUADOR: FROM CONSTITUTIONAL DOGMA-TIC TO LOCAL REALITY

# SOBRE LOS DERECHOS DE LAS PERSONAS ADULTAS EN ECUADOR: DE LA DOGMÁTICA CONSTITUCIONAL A LA REALIDAD LOCAL

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#### **ABSTRACT**

The defense of rights of priority care groups takes on special relevance, particularly considering that, within this group, millions of older adults suffer violations of their rights, ranging from discrimination and social and political exclusion, to abuse in institutions, neglect in humanitarian settings, and denial and rationing of health care. In this context, this paper analyzes the state of rights of older adults as a result of family, social and institutional public-private relationships. For this, a field investigation was carried out in Santo Domingo de los Tsáchilas province, Ecuador. Interviews were carried out with public and private officials and surveys with different actors, including older adults. The findings show that, in the case of this province, their rights are violated, mainly in social and family environments. Furthermore, the evidence suggests that the institutions in charge of ensuring their care have implemented programs or provided their services in a timely manner and with positive results, which has made it possible to guarantee their constitutional rights. It is concluded that the responsibility to guarantee their rights is social and involves all the people who are directly or indirectly related to them.

Keywords: Constitutional guarantees, human rights, rights of special groups, older adults.

# **RESUMEN**

La defensa de los derechos de los grupos de atención prioritaria cobra especial relevancia, sobre todo teniendo en cuenta que, dentro de este grupo, millones de adultos mayores sufren violaciones de sus derechos, que van desde la discriminación y la exclusión social y política, hasta el abuso en las instituciones, el abandono en contextos humanitarios, y negación y racionamiento de la atención médica. En este contexto, este trabajo analiza el estado de los derechos de las personas mayores como resultado de las relaciones público-privadas familiares, sociales e institucionales. Para ello, se realizó una investigación de campo en la provincia de Santo Domingo de los Tsáchilas, Ecuador. Se realizaron entrevistas con funcionarios públicos y privados y encuestas con diferentes actores, incluidos los adultos mayores. Los hallazgos muestran que, en el caso de esta provincia, se vulneran sus derechos, principalmente en el ámbito social y familiar. Además, la evidencia sugiere que las instituciones encargadas de velar por su atención han implementado programas o prestado sus servicios de manera oportuna y con resultados positivos, lo que ha permitido garantizar sus derechos constitucionales. Se concluye que la responsabilidad de garantizar sus derechos es social e involucra a todas las personas que están directa o indirectamente relacionadas con ellos.

Palabras clave: Garantías constitucionales, derechos humanos, derechos de grupos especiales, adultos mayores.

#### INTRODUCTION

The best protection that priority care individuals and groups can receive consists of their constitutional protection against any action that violates them. In this sense, the Political Constitution of Ecuador of 2008, with the aim of guaranteeing their rights, establishes, in article 35, that this group of people 'will receive priority and specialized attention in the public and private spheres' and, in article 36, that, in the event of being in a situation of risk, 'the state will provide special protection to people in conditions of double vulnerability'.

In particular, the defense of the rights of priority attention groups becomes even more relevant if it is taken into consideration that, within this group, in 2020, Human Rights Watch, one of the main non-governmental organizations in favor of human rights, pointed out that, each year, millions of older adults suffer violations of their rights, ranging from discrimination and social and political exclusion, to abuse in nursing facilities, neglect in humanitarian settings and denial and rationing of medical care. In addition, it claims that most of these abuses remain undocumented and the perpetrators remain unpunished.

In this sense, in addition to the direct risks for older adults caused by their greater vulnerability, there are several latent or indirect risks to their health and well-being that emanate from socio-cultural and demographic factors (D'Cruz & Banerjee, 2020). Thus, for example, in general, the marginalization of older adults ranges between 55 and 70% per cent worldwide (Walsh, et al., 2019). For its part, in Ecuador, according to the latest survey on Health and Welfare of the Elderly (or SABE by its acronym in Spanish), conducted in 2010, 14.9 percent of the elderly are in a situation of neglect and abandonment and 23.5 per cent in a situation of indigence.

In this regard, D'Cruz & Banerjee (2020), argue that the social exclusion of older adults is always relative to the normative or majority society. As a result of this situation, these authors consider that this group of people are identified as the other and dehumanized. Likewise, they point out that social structures such as nursing homes and geriatric clinics, while providing specialized services, have also contributed to their segregation from the general population. To this, in turn, should be added the fact that the process of social exclusion also deprives older adults of their agency, autonomy and independence and decisions are made in their name.

The multidimensionality process and the minority stress hypothesis imply that there are often multiple factors that contribute to the social exclusion of this priority care group. Additionally, these factors have a cumulative effect

and a longitudinal impact on their health and well-being. According to D'Cruz & Banerjee (2020), there are at least six identified domains of social exclusion, namely: i) neighborhood and community, ii) social relationships, iii) services, amenities and mobility, iv) material resources and financial, v) sociocultural aspects and vi) civic participation.

In relation to this debate, Fulchiron (2017), emphasizes that the legal regime focused on vulnerable older adults should not only be considered to protect the exercise of their rights, but also, if necessary, restrict their exercise to a certain extent to better protect them.

However, according to the concerns pointed out by Human Rights Watch, from academia, the issue of the violation of older people's rights has also been one of the major concerns addressed in the literature in recent years. In this context, in Europe and Asia, several studies have focused on understanding the experiences of older people within a framework that shows a process of systematic stereotypes and discrimination and how these practices could provide elements that allow improving policies to increase prevention and the promotion of their health, as well as their social inclusion (Love & Lynch, 2018; Yang, et al., 2018; Frączkiewicz-Wronka, et al., 2019; Mondal & Dubey, 2020).

On the other hand, in the case of Latin American, different publications have focused their analysis on factors that contribute to the violation of the rights of the elderly and some dimensions of this problem. Thus, for instance, there is research that indicates that, within this priority attention group, there are people who cannot perceive the violence of which they are victims, cannot defend themselves and/or cannot access justice, thus corroborating that the perpetrators of the crime go unpunished (Marchiori, 2017).

Furthermore, other studies have analyzed elements that restrict their autonomy and inclusion and keep them at risk. Thus, for example, Ivo & Farias (2017), point out that the poor quality of the space built in urban spaces in Brazil limits their mobility, while Ortega González (2018), argues that, in Chile, the presence of different expressions of abuse towards this population group continues to increase the reproduction of inequalities that public institutions have not been able to mitigate. For this reason, several studies (Ovalle Favela, 2016; Yarce, et al., 2017) suggest that the inclusion of agreements with private institutions and the construction of new public policy programs are necessary elements to be able to dispense more effectively the constitutional guarantees of the elderly.

For its part, within the Ecuadorian context, although academia has also joined to elucidate the existing problems

for older adults in the country, most of the research done has focused on health issues (González Terán, 2018; Rodríguez, et al., 2018) and there is an underrepresentation in the concrete aspect of the analysis of their rights (González, et al., 2016; Larco Camacho & Rodas Garcés, 2017). Thus, this paper aims to contribute to filling this gap in the literature and, for this, it raises the following questions: to what extent are the constitutional guarantees of older adults contemplated by public authorities? What are the needs of this priority care group and what has been the reaction to cover them by public and private institutions? And finally, what is the perception of this age group regarding the care they receive at the family, social and governmental level?

In this context, in order to better characterize the current situation of older adults in Ecuador, it is important to propose an empirical study that reflects on the social dynamics and the current situation of this social group. For this, this article focuses on a case study carried out in the province of Santo Domingo de los Tsáchilas in Ecuador where, according to the population statistics of the National Institute of Statistics and Censuses (INEC by its acronym in Spanish), approximately 9 percent of the total population (511,151), that is, 43,160 people belong to this segment of the population considered as older adults. In national terms, this figure represents that the province has around 3% of the total of this age group in the country.

Two fundamental elements led us to choose this province to carry out the study. In the first place, despite the efforts, first, through the determination made in the Constitution of the Republic of Ecuador of 2008 to recognize this group as priority attention and, second, through the Law of the Elderly, published in the Official Gazette on May 9, 2019, as stated by legal analysts and public ministries officials, there are no studies that allow issuing a more sustained statement, both on the policies specific prevention, care, protection, restitution and reparation, as well as their true impact.

In this sense, although it is clear that case studies do not represent a sample of a population or a specific universe, so they cannot be statistically generalizable, the purpose of this research tool is to understand the interaction between the different parts of a system and its important characteristics, in such a way that the analysis carried out can be applied in a generic way, even from a single case, insofar as it is achieved an understanding of processes, structure, and driving forces, rather than establishing correlations or cause-and-effect relationships.

In addition, if it is taken into consideration that, in 2020, the Ministry of Economic and Social Inclusion mentioned

that the most advanced research so far is a study on the state of the elderly around the year 2010, the development of contemporary research becomes even more relevant to be able to identify the main problems faced by older adults and emphasize the conditions that could be modified with the implementation of public policies.

Second, the fact that, for almost a decade, different public organizations —including the Ministry of Economic and Social Inclusion, the Public Defender's Office of Ecuador, the Autonomous Decentralized Provincial Government of Santo Domingo de los Tsáchilas, and even several Higher Education Institutions— have publicly socialized different programs and actions in favor of rights of older adults in this province, also seemed interesting for the analysis wanted to be done on the context of this priority care group. Indeed, the fact that several institutions have carried out different actions to guarantee equality, inclusion, non-discrimination and promotion and health care services was a favorable factor to analyze if the constitutional principles were being fully complied with in this province.

### MATERIALS AND METHODS

To answer the established questions, a field investigation was designed. A mixed methodology was adopted, with an exploratory level of depth for the qualitative part and descriptive for the quantitative part.

To collect the information, multistage sampling techniques were used in which, in the first stage, officials from different public institutions and a non-governmental organization were chosen through a non-probabilistic intentional selection technique (Table 1). The objective behind the choice of this particular sampling technique was to address the specific purpose of this research, namely, to provide the same opportunity to analyze the context of older adults in this province with different types of actors. With them, unstructured interviews were conducted about the actions that their institutions develop in the face of the situation experienced by this priority care group in the province of Santo Domingo de los Tsáchilas.

Table 1. Public and private actors interviewed for the qualitative sample.

Research technique	Type of interviewee	Sample
	Public servant of the Gerontological Center of Santo Domingo	1
	District Director of the Ministry of Economic and Social Inclusion (MIES by its acronym in Spanish) of Santo Domingo	1
	MIES Senior Population Care and Service Analyst	1
Non-structured in-	Technical Secretary of the Cantonal Council on Protection of Rights of Santo Domingo	1
terviews	Technical Secretary of the Cantonal Council on Protection of Rights of La Concordia	1
	Director of the Santa Ana and San Joaquin Nursing Home	1

In the second stage, two surveys with closed-ended responses were developed. For the first survey, the sampling frame was designed taking into account certain sociodemographic characteristics of the population, such as age, people 30 years of age and older, and the place of residence, only residents of the two cantons that make up this province: Santo Domingo and La Concordia.

To determine the number of respondents, random and intentional probability sampling techniques were carried out, using an online sample calculator (www.surveymonkey.com/mp/sample-size-calculator/), with a 95% confidence level and a margin of 7% error —considered an acceptable percentage for survey studies—, with the data available in the 2010 Ecuador Population and Housing Census. In total, the population identified, taking into account the aforementioned characteristics, was 140,531 inhabitants. From this, a sample of 196 people was chosen (Table 2), taking into account the availability of the respondents according to the required characteristics of the population and time constraints.

Table 2. Actors interviewed for the quantitative sample.

Research technique	Type of interviewee	Sample	Sampling technique
	Citizens over 30 years old from Santo Domingo canton	62	Random
Closed-ended survey	Citizens over 30 years old from La Concordia canton	98	Random
	Older adults in a nursing home in Santo Domingo canton	36	Intentional

The data was collected through questionnaires, where the randomly selected respondents (n = 160) were first asked to answer if they knew about cases of abandonment of older adults, the procedure to report this type of event, if they had relatives or friends in institutions for older adults and the type of help they provided. The second survey was conducted with intentionally chosen older adults (n = 36). They were asked whether they had government support or not, the type of government help they have received, the level of satisfaction with the health services they have been provided, and if they have been victims of abuse within family, social and/or institutional settings.

Finally, the interviews were transcribed into a Microsoft Word document and, later, analyzed inductively, through a line-by-line coding process with Atlas.ti 7. In this way, the codes that emerged from the analysis of the interviews, ultimately, were categorized into three key themes: 1) constitutional guarantees, 2) needs of the elderly, and 3) institutional care. On the other hand, the quantitative data were coded in Excel, then they were analyzed through frequency distribution and percentages and the results were presented in tables.

#### **RESULTS AND DISCUSSION**

According to the Santo Domingo Technical Secretary of the Cantonal Council on Protection of Rights, in general, the provincial institutions in charge of protecting the rights of older adults and, in particular, her institution, have tried to develop the necessary actions to be able to comply with the constitutional mandates on the rights of individuals and priority care groups indicated in the first section that specifically refers to this age group.

In this regard, the official pointed out that this institution carries out all the necessary actions so that the laws that protect the elderly are respected and emphasized that whoever violates it must be punished because, as she stated in her own words, 'without punishment there is no justice'. On this basis, this government employee pointed out that article 36 of the Ecuadorian Constitution determines that older adults should receive priority care and protection against violence.

Furthermore, the testimonies of the District Director of the Ministry of Economic and Social Inclusion (MIES) of Santo Domingo and the Senior Population Care and Service Analyst of the same institution agreed that, although the Constitution prescribes that the Government has to guarantee the rights of elderly persons (article 37), nonetheless, it is important to take into consideration that these people must also, as established in article 36, receive 'priority and specialized attention in public and private spheres'.

Thus, the interview with the Director of the Santa Ana and San Joaquin Nursing Home enabled to perceive that the social work carried out by this private institution has made it possible, as demonstrated with the senior citizens that live in this nursing home, that older adults receive the care that is guaranteed by the Ecuadorian Constitution. In this regard, she emphasized that 'the rights of the elderly must be respected [...] and cases of abandonment reported, but also accompany and support them so that they know that they are not helpless'.

Regarding this last aspect, the Technical Secretaries of the Cantonal Council on Protection of Rights, both of Santo Domingo and La Concordia, emphasized that their main concern is to comply with what the Constitution mandates in article 3, when it establishes that the State must lay the foundations to institute policies and assistance programs for the elderly that take into account the specific differences between urban and rural areas and that, in this same provision, in numeral 9, indicates that the State must take measures for an 'adequate economic and psychological assistance that guarantees their physical and mental stability'. Specifically, according to their testimonies, their

institutions seek to comply with this mandate by attending, but also by developing actions that allow mitigating the complaints they receive, which, on average, in recent years, have oscillated between 6 and 8 per month, mainly, due to demands for non-contributory monetary transfers that by law correspond to these people —such as, for example, the Human Development Bonus or the Social Pension for Senior Citizens—, or due to abuse and/ or abandonment.

However, as MIES officials mentioned, on several occasions this does not happen. For this reason, as a result of the cases of abuse or abandonment, in recent years, this institution has implemented the project 'My Best Years', through which they have been able to reintegrate older adults into their families and maintain adequate monitoring of their conditions by social workers. Furthermore, they indicated that they maintain joint actions with other institutions, such as the Ministry of Health or the Ecuadorian Social Security Institute, who contribute to supply medicines to the gerontological centers where this priority care group is housed and, as highlighted by a public servant of the Gerontological Center of Santo Domingo interviewed, to provide the necessary care and have an adequate control of their health.

According to the public servant of this center, the Government has invested more than 51,000 dollars for the maintenance and remodeling of this gerontological center, where Senior Citizens are cared for through three modalities: residential, daytime and active spaces. In addition, according to his words, they receive food and nutrition, occupational activities and full health care.

As may be observed from Table 3, more than half of the respondents (51 per cent) reported that they knew of cases of abandonment of older adults in their cantons, however, a high percentage of them (61 per cent) were unaware of the procedure to report this type of cases. Furthermore, despite the fact that a high number of respondents knew about these abandonment events, 52 per cent reported that they had no friends and/or relatives belonging to this age group who were housed in public or private institutions. However, the majority of people (95 per cent) stated that they have helped at least once an older adult. Among the main forms of contribution or help that they have offered, financial assistance (36 per cent), food aid (19 per cent) and other types (19 per cent) such as, for example, emotional or moral, stand out. On the other hand, despite the context of abandonment experienced by this priority care group, only 6 per cent have offered to house them in their homes.

Table 3. Descriptive statistics of older adults in family and society environments (n = 160).

No.	Variable	Yes per cent (sample)	No per cent (sample)
1	Knowledge of abandonment cases	51 (82)	49 (78)
2	Knowledge of the process to report abandon- ment cases	39 (62)	61 (98)
3	Has friends or family members in institutions that house older adults	38 (61)	52 (99)
4	Helps an older adult	95 (152)	5 (8)
4.1	Financial assistance	36 (55)	
4.2	Food aid	19 (29)	
4.3	Medicine	12 (18)	
4.4	Clothing	8 (12)	
4.5	Housing	6 (9)	
4.6	Affective and moral help	19 (29)	

On the other hand, from the perspective of the older adults surveyed, the analysis of the data presented in Table 4 shows that almost all (95 per cent) receive support from the government, mainly financial (72 per cent) and, to a lesser extent, in health care and medical assistance (22 per cent) —of which 95 per cent of the participants said they were satisfied—, and housing aid (6 per cent). Lastly, with regard to abuse or discrimination, a particular fact was found: 55 percent indicated that, generally, they are exposed to these events in social settings, followed by abuse within the family environment (29 per cent).

Table 4. Descriptive statistics of older adults in family and society environments (n = 160).

No.	Variables	Yes per cent (sample)	No per cent (sample)
1	Receive government support	95 (34)	5 (2)
1.1	Financial assistance	72 (24)	
1.2	Health care and Medical assistance	22 (7)	
1.3	Housing aid	6 (3)	
2	Satisfied with health services in public and private institutions	95 (34)	5 (2)
3	Has been a victim of abuse in public/private institutions	5 (2)	95 (34)
4	Has been a victim of abuse in the family environment	29 (10)	71 (26)
5	Has been a victim of abuse in social settings	55 (20)	45 (16)

In the present study, it has been analyzed the status of rights of older adults in the province of Santo Domingo de los Tsáchilas (Ecuador) as a result of family, social and institutional public-private relationships. The findings show that, contrary to the extensive documentation about the violation of rights of people belonging to this age group in institutional settings, both private and public, in the case of this province, their rights are violated, mainly, in social and family settings (Supromin & Choonhakhlai, 2017; Mondal & Dubey, 2020). Thus, in line with previous studies, the results demonstrate that the context of vulnerability of this priority care group in this province may emerge as a consequence of relational risk factors —especially when there are cases of a history of dysfunctional family relationships— and sociocultural risk factors —due to the weakening of the awareness of society (Viteri Chiriboga, et al., 2018).

Furthermore, regarding public and private institutions in charge of ensuring the care of these people, the evidence suggests that they have implemented programs or provided their services in a timely manner and with positive results,

which has allowed guaranteeing their constitutional rights. Thus, in general, these findings allow this research to contribute to the debate that indicates that public-private institutional efforts that have common objectives, such as the protection of rights and interests of the elderly, as well as cooperation between this type of actors are factors key to get it (Kohutis, 2016; Supromin & Choonhakhlai, 2017).

However, in spite of the contributions made to the literature on rights of older adults, especially in the Ecuadorian context, this paper is not without its limitations. In this sense, in the first place, it should be noted that, even though the interviews with public and private actors made it possible to observe that the institutional discourse, as well as the actions carried out to protect the constitutional guarantees of the elderly in this province, seem to agree and even demonstrate that some public programs developed, such as the case of the mission 'My Best Years', have been successful; on the other hand, this study has not taken this programs into consideration for an evaluation of their impact. Therefore, future research should assess the qualitative and quantitative results of this and other similar programs at the provincial and national levels to demonstrate whether the institutional discourses coincide with the conditions of older adults in society.

Second, despite the quantitative analysis of the perceptions of older adults has revealed the main risk factors that violate their rights, the sample used is not statistically representative of the total older adult population of Santo Domingo de los Tsáchilas. Therefore, we estimate that expanding the sample could help to corroborate the findings and reach more generalizable conclusions.

Regardless of these limitations and subsequent directions for future research, I consider the practical implications of this research to be important. Indeed, the results obtained on the factors that violate the rights of older adults in this province can serve to lay the foundations for a public program focused on the aspects and family and social dynamics as a key method for solving this problem. In this sense, I agree with the arguments of Thomas, et al. (2021), when they point out that the visibility of this problem is the first step to be able to distinguish, manage and prevent its appearance, but that, beyond the legislative solutions or sanctions that may be imposed, the responsibility to guarantee compliance with the rights that the law grants them is social and involves all the people who are directly or indirectly related to them.

# **CONCLUSIONS**

The empirical analysis presented above on the status of rights and the reality experienced by older adults in the province of Santo Domingo de los Tsáchilas reveals the degree of vulnerability to which they are exposed, especially within the social and family environment. Likewise, the perception of this population group reveals that the help they have received from public organizations has been important in order to cope with the reality to which they are exposed.

In addition, among the interventions that seem to have had a positive impact on guaranteeing the rights and well-being of these people in this province, we must highlight, on the one hand, the efforts of the public institutions, since they have tried to comply fully with the constitutional mandates and the best execution of government policies, such as the mission 'My Best Years'; and, on the other hand, the support of private institutions, such as the Santa Ana and San Joaquin Nursing Home, to accompany and support these tasks, as well as to demonstrate that the cooperation and participation of all social actors is necessary to mitigation the difficulties that older adults go through in the socio-cultural and family environments of this province.

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