

AGING IN THE TROPICS: THE POSITION OF OLDER PERSONS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

ENVELHECER NOS TRÓPICOS: A POSIÇÃO DA PESSOA IDOSA NO SISTEMA INTERAMERICANO DE DIREITOS HUMANOS

ENVEJECER EN LOS TRÓPICOS: LA POSICIÓN DE LAS PERSONAS MAYORES EN EL SISTEMA INTERAMERICANO DE DERECHOS HUMANOS



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ABSTRACT

The present study aims to establish a brief overview of the position of older persons and the recognition of their rights as fundamental guarantees within the Inter-American human rights system. Based on the understanding of human aging as a natural, continuous, multifactorial process that is rapidly increasing in Latin American and Caribbean countries, this study seeks to analyze how these States are addressing the growing elderly population in light of the international commitments undertaken at the regional level within the Organization of American States (OAS) and at the global level within the United Nations (UN). By outlining a historical framework of the evolution of this issue within the legal instruments that make up the Inter-American human rights system—from the Protocol of San Salvador of 1988 to the Inter-American Convention on the Protection of the Human Rights of Older Persons of 2015—the study aims to extract from these documents the reference framework through which older persons and the phenomenon of aging are viewed by OAS member States, with particular emphasis on Brazil's position in the debate on the human rights of older persons and the improvement of public policies aimed at individuals undergoing the aging process.

Keywords: Human Aging. Human Rights. Older Persons. Latin America.

RESUMO

O presente estudo propõe estabelecer um breve panorama acerca da posição da pessoa idosa e do reconhecimento de seus direitos como garantias fundamentais dentro do sistema interamericano de direitos humanos. Partindo da compreensão do envelhecimento humano como um processo natural, contínuo, multifatorial e em crescimento vertiginoso nos países latinoamericanos e caribenhos, procura-se assimilar de que forma esses Estados estão encarando o cenário de aumento de sua população idosa, a partir dos compromissos internacionais assumidos a nível regional, dentro da Organização dos Estados Americanos (OEA), e a nível global, dentro da Organização das Nações Unidas (ONU). Buscando

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estabelecer uma conjuntura histórica da evolução da temática dentro dos instrumentos jurídicos que compõem o sistema interamericano de direitos humanos, desde o Protocolo de São Salvador, de 1988, até a Convenção Interamericana sobre a Proteção dos Direitos Humanos dos Idosos, de 2015, pretende-se extrair desses documentos o referencial pelo qual as pessoas idosas e o fenômeno do envelhecimento são observados pelos países que compõem a OEA e, sobretudo, a posição do Brasil no debate acerca dos direitos humanos dos idosos e do aprimoramento das políticas públicas direcionadas aos indivíduos em processo de envelhecimento.

Palavras-chave: Envelhecimento Humano. Direitos Humanos. Pessoa Idosa. América Latina.

RESUMEN

El presente estudio propone establecer un breve panorama acerca de la posición de las personas mayores y del reconocimiento de sus derechos como garantías fundamentales dentro del sistema interamericano de derechos humanos. Partiendo de la comprensión del envejecimiento humano como un proceso natural, continuo y multifactorial, que presenta un crecimiento vertiginoso en los países latinoamericanos y caribeños, se busca analizar cómo estos Estados están enfrentando el aumento de su población adulta mayor a partir de los compromisos internacionales asumidos a nivel regional, en el ámbito de la Organización de los Estados Americanos (OEA), y a nivel global, en el marco de la Organización de las Naciones Unidas (ONU). Al establecer un recorrido histórico sobre la evolución de la temática en los instrumentos jurídicos que conforman el sistema interamericano de derechos humanos —desde el Protocolo de San Salvador de 1988 hasta la Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores de 2015—, se pretende extraer de dichos documentos el marco de referencia mediante el cual las personas mayores y el fenómeno del envejecimiento son concebidos por los Estados miembros de la OEA, destacándose especialmente la posición de Brasil en el debate sobre los derechos humanos de las personas mayores y el fortalecimiento de las políticas públicas dirigidas a quienes se encuentran en proceso de envejecimiento.

Palabras clave: Envejecimiento Humano. Derechos Humanos. Personas Mayores. América Latina.

1 INTRODUCTION

Human aging is a natural, continuous and multifactorial process, which involves psychological, biological and social factors witnessed throughout life; resulting in declines in the capacity and reserves of organs and making the individual more vulnerable to diseases, but varying greatly between each specific case, due to genetic factors, lifestyle and living environment.

The aging process manifests itself in different ways between species and also between individuals of the same species. From a perspective closer to reality, it can be understood that aging begins at birth itself. Thus, the actions and choices made throughout life are reflected in old age: healthy habits cultivated from an early age tend to produce positive effects at this stage, contributing to a healthier and more successful aging.

Some changes associated with advancing age can be positive; others, however, result in declines related to the senses and activities of daily living, in addition to increased susceptibility and frequency of diseases, frailties or disabilities. Aging is the main risk factor for the development of chronic and degenerative diseases in the elderly population and, according to data from the World Health Organization, the growth of population aging on a global scale tends to significantly increase the rates of elderly people diagnosed with dementia (2021).

With regard to the age limit in which an individual can be considered an elderly person, Brazil adopts the classification standard proposed by the WHO in its pertinent legislation to consider the individual, from sixty years of age, subject to the provisions of the Statute of the Elderly (CNDPI, 2009); and estimates indicate that, in 2050, individuals in this age group will represent one-fifth of the world's population, reaching approximately two billion people (WHO, 2021).

Recently, Brazil has undergone an inversion of its demographic pyramid, with the number of elderly people surpassing that of children in 2020. In this context, the aging index - measured by the proportion of elderly people for every hundred young people - showed significant growth. This transition is mainly due to the significant reduction in fertility rates, associated with changes in the behavior of women, who are increasingly inserted in the labor market, with continuously increasing levels of schooling and wide access to contraceptive methods (Oliveira, 2019).

The rapid aging of the population, and the increase in longevity, is associated with major social challenges such as: increased health spending, decreased income standards, resource restriction and increased functional disabilities. The elderly use health services more, hospital admissions are more frequent in this age group, and bed occupancy time is

longer when compared to other audiences. This fact stems from the pattern of diseases found in the elderly, usually chronic and multiple, requiring constant monitoring, permanent care, continuous medication and periodic exams (Veras and Oliveira, 2016).

But why think about aging? Such a simple question with so many possible answers to justify it may seem rhetorical these days. When one expects to live to a little more than seventy-six years of age, as is the case in Brazil and Latin America (IBGE, 2024), or, going further, considering the life expectancy of more or less eighty-two years of age on the European continent, there is a recurrent projection about how two or more decades will be lived as an elderly person (Eurostat, 2025).

It turns out that, by going back fifty years in time, this question takes on significantly more complex contours. According to IBGE data, in 1970 the average Brazilian had a life expectancy of only fifty-seven years (Godoy, 2025). However, there has been a significant growth over the decades: life expectancy at birth, which was fifty-four years in 1960, has reached approximately seventy-six years today, according to data from the World Bank (2022). In this sense, researchers from the World Bank itself point out that, as of 2010, Latin Americans began to live almost thirty years longer than they did in 1970 (World Bank, 2013).

Bringing the reference of other continents, according to the respective metric, the European citizen, in the early seventies, was dazzled by the prospect of reaching seventy years of age for the first time (Dattani *et al*, 2023).

Thus, when analyzed from this perspective, the previous question gains an additive: why think about aging, when the population does not age enough to be considered elderly? By reaching this question, it is understandable why the first mention specifically directed to the elderly within the inter-American human rights system only appeared at the end of the eighties, as part of the Additional Protocol to the American Convention on Human Rights, called the Protocol of San Salvador (Notari and Frago, 2011).

The inter-American system is one of the three regional systems for the protection of human rights, created from the need to decentralize the protection mechanisms that until then only existed at the global level, through the system established by the United Nations (UN) (Mazzuoli, 2021).

This system was an offshoot of the creation and development of the Organization of American States (OAS), the oldest regional organization in the world and the result of the periodic meetings and meetings, from 1889 onwards, of the independent countries of the American continent that would become part of it. However, it was only in 1948 that the OAS had its foundation officially decreed through the signing of the Pact of Bogotá (Santos and Quinteiro, 2024)

The milestone for the consolidation of the inter-American system for the protection of human rights took place in 1978, with the entry into force of the American Convention on Human Rights (ACHR), which was drafted in 1969. The ACHR was responsible for establishing an extensive framework of guidelines and guarantees and, above all, for the creation of two bodies with competence to support compliance with them by the States Parties: the Inter-American Commission on Human Rights (IACHR), which has an advisory role, and the Inter-American Court of Human Rights (IACHR Court), which has a contentious role (Santos and Quinteiro, 2024)

As previously mentioned, although of paramount relevance, the ACHR did not bring in its original text any specific mention of guarantees aimed at the elderly, a gap that would only be filled ten years after its entry into force, with the Protocol of San Salvador, which makes the following reference:

Article 17

Protection of Older People

Everyone has the right to special protection in old age. In this regard, the States Parties undertake to adopt, in a progressive manner, the necessary measures to put this right into practice and, in particular, to:

- (a) to provide adequate facilities, as well as food and specialized medical care, to persons of advanced age who do not have them and who are not in a position to acquire them by their own means;
- b) To carry out specific work programs, aimed at providing elderly people with the possibility of carrying out productive activities appropriate to their capacities, respecting their vocation or desires;
- c) to promote the formation of social organizations aimed at improving the quality of life of the elderly (BRASIL, 1999)

In an initial analysis, it is highlighted how the text attributes to the elderly a position of absolute passivity. It should be noted that, according to the regulation, the protection of the elderly is organized in three axes integrally related to the field of guaranteeing means and conditions to those who do not have them, with no emphasis on safeguarding the autonomy of the elderly person or their ability to govern themselves by their own will.

The aging process is inherent to the human being and is surrounded by an entire sociocultural sphere, in which all these propositions are made one in the promotion of integrative practices aimed at actions that lead to healthy aging, restoring the self-esteem of the elderly person and providing opportunities for them to feel useful, active and an agent of the community they are part of (de Medeiros et al, 2020)

It is necessary to overcome the stigma of viewing the elderly only as a target audience of care policies, but to consider them as subjects of rights, worthy of full care for their basic

needs, with autonomy to make choices and take control of all issues pertinent to their social participation and their contributions to the environment in which they live.

Not without reason, according to the WHO's 2015 World Report on Aging and Health, the second cross-cutting priority, preceded only by the fight against age discrimination, is the protection of the autonomy of the elderly, as a foundation of emancipation and a central component of the general well-being of this population (WHO, 2015).

Thus, despite relevant advances at the global level regarding the discussion on the protection of the human rights of the elderly and the need for solid and resolute international legislation on the subject - highlighting the Madrid International Plan of Action on Aging (MIPAA), of 2002, responsible for directly influencing the enactment of the Statute of the Elderly in Brazilian legislation -, within the inter-American system, the respective debate has cooled significantly (Notari and Frago, 2011).

It was only after the impetus of MIPAA, from 2003 onwards, that discussions about the protection of older persons within the inter-American system returned, with emphasis on the Declaration of Brasilia, adopted during the II Regional Intergovernmental Conference on Aging in Latin America and the Caribbean, in 2007, and the other meetings that followed, with the commitment to promote and protect the human rights and fundamental freedoms of older persons, which culminated in the adoption of the Charter of San José on the Rights of Older Persons in Latin America and the Caribbean in 2012 (Notari and Frago, 2011)

Among the nineteen items that make up the aforementioned letter, item eight stands out, which dealt with ensuring the promotion of opportunities for access to the labor market and activities that generate income for the elderly; item 10, which focused on the commitment of Latin American states to improve housing conditions and the use of public spaces by older people, in order to strengthen their autonomy and independence; as well as item 11, responsible for reiterating the conviction that education and learning are permanent processes that must be guaranteed and enjoyed regardless of the age group to which the individual belongs (UN, 2012).

All these items gain special relevance because they converge to an active aging approach, based on the consolidation of the human rights of the elderly and the maintenance of their autonomy and independence, with the objective of increasing the quality and healthy life expectancy for all those who are in the aging process, ensuring their social participation and all forms of protection and assistance, establishing a confluence between interdependence and solidarity between generations (UN, 2012).

Although it was just one more piece within the framework of *soft laws* to deal with the subject, that is, another norm of non-mandatory compliance and of a merely directive nature

(MAZZUOLI, 2020), this letter reinforced important commitments and established other unprecedented ones regarding the recognition of active and healthy aging as a fundamental human right, in addition to sowing the field for the Inter-American Convention on the Human Rights of Older Adults (CPM).

The CPM arose from a joint effort by Latin American and Caribbean states to create an international convention for the human rights of older persons. The fundamental objective of this effort was to ensure, through an international treaty of peremptory obligations and broad oversight, compliance with public policies involving the theme (Notari and Frago, 2011).

Initially, it is necessary to highlight the pioneering spirit of the inter-American system in adopting an international treaty for the human rights of older persons. This vanguard position exercised by Latin American and Caribbean states demonstrates coherence and attention to the most up-to-date studies of the subject in question. This is because, although the American continent, like the others, has a significantly younger population when compared to the European one, the perspective given by demographic projections is that the American continent will experience accelerated growth over the next few decades (Notari and Frago, 2011).

The CPM was a notable advance within the inter-American system by dedicating seven chapters and forty-one articles to the guidelines for the protection of the elderly as a human and fundamental right, covering necessary concepts, such as the various forms of discrimination that affect the elderly, from abandonment and neglect to ageism and multiple discrimination (OAS, 2015).

In this vein, the definition of active and healthy aging proposed by the OAS deserves to be highlighted, as follows:

"Process by which opportunities for physical, mental and social well-being are optimized; to participate in social, economic, cultural, spiritual and civic activities; and to have protection, security and attention, with the aim of increasing the healthy life expectancy and quality of life of all individuals in old age and thus allowing them to continue to contribute actively to their families, friends, communities and nations. The concept of active and healthy aging applies to both individuals and population groups." (OAS, 2015).

Following the same direction as the norms previously adopted by Latin American and Caribbean states, the CPM has advanced even further in the recognition of the elderly as an active subject, emphasizing principles such as self-realization, that is, much more than offering the elderly protection and assistance, governments must provide them with active

participation in the formulation of policies and in the definition of what, in fact, it is dignified and healthy for oneself (OAS, 2015).

The movement towards the solidification of the autonomy of the elderly, as previously mentioned, is also evidenced in the formulation of an article entirely dedicated to guaranteeing the right to manifest free and informed consent in the context of health procedures, establishing it as an inalienable right and considering non-compliance with this guideline a form of human rights violation (OAS, 2015).

Considering the current context of continuous changes in the environment and increasingly accentuated migratory processes, whether due to conflict scenarios or natural disasters, another aspect worthy of attention in the CPM is the presence of two articles aimed at the commitment of the States Parties to ensure a healthy environment, with full accessibility and broad mobility for the elderly, as well as full protection for those at risk related to humanitarian emergencies (OAS, 2015).

Notwithstanding the significant advance in the protection of the human rights of the elderly, the most important aspect of the CPM is the presence of mechanisms for monitoring and reporting violations of the guarantees contained therein. The creation of a system of individual petitions to the organs that make up the inter-American human rights system, based on continuous follow-up procedures, such as the possibility of meeting the States Parties at conferences and the designation of a committee of experts, composed of experts in the field, to recommend and monitor progress in the implementation of the Convention, this is what makes this treaty a milestone in the fight against all forms of violence and discrimination against older people (Mazzuoli, 2021).

The Conference of States Parties, defined in Article 34 of the CPM, aims to monitor the progress of compliance with the commitments set forth in the convention, to resolve all issues that may arise regarding the inspection and follow-up procedures, as well as to receive, analyze and evaluate any recommendations issued by the Committee of Experts (OAS, 2015).

The Committee of Experts, a body made up of experts appointed by each of the States Parties, is responsible for collaborating in monitoring the progress of the implementation of the MPC in Latin America and the Caribbean, occupying the role of technical responsible for the analysis of reports, and presenting recommendations to the States Parties so that they align their efforts in adapting domestic legislation to the commitments assumed in the convention (OAS, 2015).

In the event of any type of failure to comply with the commitments assumed in the convention, the treaty itself presents the individual petition system as a way of denouncing to

the Inter-American Commission on Human Rights any type of violation of the rights of older persons, provided to the Member State, at the time of deposit of the instrument of ratification or at any time after accession to the CPM, recognize the competence of the IACHR to receive complaints against it and even direct them, if necessary, to the Inter-American Court of Human Rights (Mazzuoli, 2021).

It should be noted that, since the entry into force of the CPM, the mechanisms for monitoring and monitoring the commitments, as well as the competences of the IACHR and the Inter-American Court of Human Rights, have already been activated, directly and indirectly related to the protection of the human rights of the elderly, at various times, highlighting the cases: *Poblete Vilches y Otros vs. Chile*; *Yakye Axa vs. Paraguay*; *Five Pensioners vs. Peru*; *Valle Jaramillo vs. Colombia*; *Muelle Flores vs. Peru*; and *Asociación Nacional de Cesantes y Jubilados de la Superintendencia Nacional de Administración Tributaria (ANCEJUB-SUNAT) vs. Peru* (Santos and Quinteiro, 2024).

The absence of Brazil from the list of cases that have reached the recommendation and containment bodies of the inter-American human rights system, although it may seem positive at first glance, is not due to the lack of violations of the human rights of the elderly on national soil, but, unfortunately, to the fact that, to date, the Brazilian State has not yet ratified the CPM.

Contrary to all of Brazil's purposeful action in discussions about human aging and the need for international treaties and mechanisms to ensure compliance with the guarantees aimed at the elderly, in a brief consultation of the electronic portal of the Chamber of Deputies, it is possible to see that the proposal for ratification of the CPM, internally transformed into PDC 863/2017, has been in progress for 9 years, without any progress or signal towards a possible desire of the Executive and Legislative powers to establish the position of adhesion of the Brazilian State in relation to the commitments assumed with the other States that make up the inter-American system (Brasil, 2017).

This scenario is worrisome, since, as Mazzuoli teaches, while not ratified, the CPM is not in force within the Brazilian system, serving only as an axiological support in the interpretation of guarantees of protection of the rights of the elderly. Upon ratification, the commitments assumed in the convention will function as a paradigm for controlling the conventionality of internal rules, and, if the instrument is approved by the National Congress in accordance with paragraph 3 of article 5 of the Federal Constitution, the text of the CPM will be received with the equivalence of a constitutional amendment, also acting as a reference for the control of constitutionality. In other words, the treaty will occupy the function

of a model of adequacy in relation to the entire infra-constitutional legislative framework (2021).

As he has sought to clarify throughout the chapter, much progress has already been made with regard to the recognition of the guarantees of the elderly as human and fundamental rights. When compared to the environment in which the debate on the subject was found in the last third of the last century, the current scenario clearly places the elderly in a position of much greater relevance and worthy of a wide range of prerogatives that safeguard their well-being.

When analyzing the debate from the perspective of the inter-American human rights system, the situation is even more favorable, since Latin American and Caribbean countries present a significantly more emphatic and purposeful posture in the consolidation of the fundamental guarantees of the elderly, when compared to other regions of the planet and, above all, to the global scenario.

However, there is still a long way to go, especially with regard to the consolidation of the human rights of the elderly on Brazilian soil. And there is, on the horizon of Brazil, no better way to take this important step towards the recognition of the elderly as a fundamental subject in the productive and demographic composition of the nation than the ratification of the CPM, based on a joint effort of all the powers that make up the governmental structure.

At the same time, it is urgent that not only Brazil, but the entire American continent, continue to seek to support the debate focused on the best studies and technical references in the area of the epidemiology of aging, with a focus on understanding and managing the demographic, health, and social implications of this global and accelerated phenomenon, aiming to adapt policies and services for a longer-lived population with new needs

By following this path, the Brazilian State will be able to concretely transform the human rights of the elderly into a fundamental foundation in legislation and in society, through the full realization of its guarantees, the active fight against prejudice and the continuous improvement of public policies aimed at individuals in the aging process, in order to guarantee them a dignified and participatory old age.

The poet Charles Bukowski, recognized for facing aging in a very characteristic and sometimes even humorous way, brings, in his poem entitled *Helping the Old*, the following verses:

Today I was in line at the bank
When an old guy in front of me
let your glasses fall (luckily, inside the case)
and as he bends down to pick them up
I could see how difficult it was for him

And I said, "Wait, let me take it..."
 But as soon as I got beaten
 He dropped his cane
 A beautiful, black, waxed cane
 And I gave him back his glasses
 And then I went to get the cane
 Supporting the old man
 while giving him back his cane.
 He didn't say anything, just smiled at me
 then turned forward
 I stood behind him
 waiting for my turn. (2009)

These simple verses, not very expressive to the inattentive reader, faithfully portray the scenario in which the global demography finds itself. There are those who have already reached old age and are letting their belongings fall to the ground. And there are those who are still behind them, waiting for their turn, and should never spare efforts so that the world in which they live guarantees them an active, healthy and dignified aging.

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