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Ref.: **Independent Expert on the enjoyment of all human rights by older persons on "Autonomy, Participation and Human Dignity of Older Persons with Cognitive Impairment", 63rd session of the United Nations Human Rights Council**

The Federal Public Defenders' Office of Brazil (DPU) hereby submits its contribution with the aim of providing relevant information on the specific ways in which the human rights of older persons with cognitive impairment are affected in the region, in light of Inter-American human rights standards and the Martino v. Argentina case. This contribution is grounded in the question of how to ensure that older persons with cognitive impairment continue to be recognized as full rights holders in the Global South, a region marked by structural inequalities, where unequal access to health services directly affects the effective enjoyment of rights in old age.

Since its establishment[1], the DPU has provided free legal assistance, as well as the protection and promotion of human rights for persons in situations of vulnerability. With regard to older persons, its work primarily addresses claims related to healthcare access, social security, and housing.[2]

I. The Right to Health in the Inter-American System and Its Protection as a Guarantee of Voice, Recognition, and a Dignified Life for Older Persons

The right to life, by virtue of the interdependence of human rights, requires the effective protection of the right to health, understood as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity",[3], thereby constituting a prerequisite for the exercise and enjoyment of

all other rights.

However, the effective enjoyment of this right is conditioned by structural factors such as age, disability, socioeconomic status, place of residence, among others. In this regard, an intersectional approach makes it possible to understand that older persons experience "multiple, layered identities, shaped by social relations, history, and the operation of structures of power"[4], placing them in situations of vulnerability and requiring "specific or enhanced protection".[5]

In Brazil, economic inequalities directly affect effective access to healthcare and long-term care services. In 2023, the income of the wealthiest 10% of the population was 14.4 times higher than that of the poorest 40%, disproportionately affecting Black and Brown populations, who are predominantly concentrated in the lowest-income groups.[6] This scenario demonstrates that, in a country characterized by cultural and ethnic diversity, guaranteeing the rights of older persons requires an intersectional approach.

The Pan American Health Organization (PAHO)[7] has noted that the term *dementia* is commonly used to refer to a range of chronic and degenerative diseases. It constitutes one of the leading causes of disability in low- and middle-income countries and results in dependency[8] for those living with the condition, as well as the need for caregivers. Alzheimer's disease accounts for between 60% and 70% of all dementia cases and its prevalence is increasing rapidly. According to the Pan American Health Organization (PAHO), "Women are disproportionately affected. In the Region of the Americas, 66% of deaths due to Alzheimer's disease and other forms of dementia occur among women". In addition, the disease is often accompanied by significant social stigma.

II. The Disproportionate Impact of Cognitive Impairment on Older Women in Light of the Case *Martino v. Argentina* (Case No. 13,342)

In the Brazilian context, the 2022 Demographic Census indicates that persons aged 65 and over account for 10.9% of the country's population[9], reflecting an **ongoing feminization of ageing**[10]. Women's ageing "combines biological factors with social inequalities that accumulate throughout the life course"[11] and, despite formal advances in the protection of women's rights, **women continue to face discrimination rooted in a historical context of patriarchal subordination**, exposing them to multiple forms of violence and discrimination.[12]

Within this context, Alzheimer's disease is one of the leading forms of dementia. It is a highly disabling condition that results in dependency and disproportionately affects women, who account for a higher number of dementia-related deaths. The PAHO has identified this issue as a public health priority and has called on governments to develop and implement national plans to address it.

Alzheimer's disease further exacerbates the vulnerability of older women, as illustrated by Martino v. Argentina[13] (Case No. 13,342, currently pending before the Inter-American Court of Human Rights)

which demonstrates how the human rights of older persons may be undermined in the absence of adequate safeguards. In that case, Ms. Rosa Ángela Martino, an older woman, retiree, and beneficiary of Argentina's Comprehensive Medical Care Program (Programa de Atención Médica Integral – PAMI), was diagnosed with "Alzheimer's-type dementia with a history of progressive cognitive impairment" and required admission to a geriatric care facility. During her institutionalization, between November 2005 and April 2006, her living conditions deteriorated severely. She lost ten kilograms in weight and was repeatedly found in conditions of poor hygiene, neglected personal care, and with traces of human waste on her body. Faced with this situation, her daughter and sole caregiver embarked on a prolonged administrative and judicial struggle to secure better care that would preserve her mother's dignity and ensure coverage of the costs of her treatment.[14]

The case concerns the rights to health and social security, protected under Article 26 of the American Convention on Human Rights (ACHR), which must be guaranteed in accordance with the standards of availability, accessibility, acceptability, and quality established by the Inter-American Court of Human Rights in the case of Poblete Vilches *et al*. v. Chile. It also concerns the rights to life and to personal integrity enshrined in Article 5 of the ACHR. As the Inter-American Court has consistently recognized, the right to life is not limited to mere biological existence; rather, it imposes on States both a negative obligation – not to arbitrarily deprive individuals of their lives – and a positive obligation – to ensure the conditions necessary for a life with dignity through appropriate laws and institutions. This is because the right to life constitutes the indispensable prerequisite for the exercise of all other human rights.[15]

In this regard, "it is not enough to proclaim equality of treatment when equality of opportunity does not exist in practice"[16]. This requires the incorporation of a gender perspective as an essential analytical framework for understanding structural inequalities and advancing substantive equality, with important implications for democratic governance.[17]

III. Standards of the Inter-American Human Rights System

The Inter-American Human Rights System has developed standards for the protection of older persons in the context of healthcare and the right to care, recognizing their need for enhanced protection. In this regard, the Inter-American Court of Human Rights has recognized that "age is also a protected category […]. Accordingly, the prohibition of discrimination on the basis of age, with respect to older persons, is protected under the American Convention. This entails, among other things, the adoption of inclusive policies for the population as a whole and ensuring easy access to public services."[18]

In the case of Poblete Vilches *et al*. v. Chile, the Inter-American Court of Human Rights, for the first time, developed jurisprudence specifically addressing the right to health of older persons. In that judgment, the Court emphasized "the importance of recognizing older persons as rights holders entitled to special protection and, consequently, to comprehensive care, with full respect for their autonomy and independence."[19] In the case of Ximenes Lopes v. Brazil[20], the Court held that the State assumes a special position as guarantor with respect to persons with disabilities who are under its custody or care,

particularly in institutional settings. This position entails a positive obligation to ensure conditions for a life with dignity, as well as an enhanced duty to prevent violations of the rights to life and personal integrity.

> *138. For the purpose of determining the State's obligations with respect to persons with mental disabilities, the Court considers it necessary, first, to take into account the State's special position as guarantor toward persons under its custody or care. In such circumstances, the State has a positive obligation to provide the conditions necessary for those persons to live with dignity. This entails enhanced duties to regulate and supervise institutions, as well as to investigate violations*

The Court recalls that it is not sufficient for States merely to refrain from violating human rights. Rather, they are required to adopt positive measures, the scope of which must be determined in light of the particular protection needs of the rights holder, whether arising from the individual's personal circumstances or from the specific situation in which they find themselves, such as disability. [21] The same applies to the State's duty to investigate violations and to ensure effective access to justice for persons with disabilities.

In its recent Advisory Opinion No. 31/25, the Inter-American Court of Human Rights expressly recognized the right to care as an autonomous and enforceable human right. The Court gave particular attention to the right to "receive care"[22] – which complements the rights to provide care and to self-care – emphasizing that it entails receiving quality care with full respect for the autonomy and participation of the person receiving it. The Court also observed that older persons constitute "the second largest group among care recipients"[23]. Furthermore, it warned of the dangers posed by negative stereotypes associated with older persons with disabilities, as such stereotypes create barriers that prevent them from accessing the care to which they are entitled without discrimination[24].

It is worth noting that Latin American legal scholarship has emphasized that the right to health is intrinsically linked to the right to equality, a connection that is essential for understanding how age operates as a category shaped by power relations. It also highlights the fraternal dimension of the right to health, viewing it as a "social pact" grounded in fraternity and solidarity. Ronconi argues that guaranteeing this right on the basis of equal opportunity requires the identification of its minimum core obligations together with an appropriate interpretation of its peripheral content.[25] In turn, Martini Vial[26] emphasizes the collective nature of the right to health and the need to critically examine care arrangements in order to ask who, in fact, provides care for these bodies[27].

IV. Recommendations

In light of the risks and human rights violations identified, the Federal Public Defenders' Office makes the following recommendations:

That States ensure effective access to healthcare for older persons, taking into account the economic, racial,

and gender inequalities that condition it, recognizing that access to healthcare is a prerequisite for the enjoyment of other human rights and for the achievement of substantive equality.

That cases involving older persons with cognitive impairment be assessed through an intersectional and gender-sensitive approach, recognizing that older women experience cumulative and intersecting forms of inequality within patriarchal societies.

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[1] Law No. 9,020/1995 gave effect to the provisions already established in Complementary Law No. 80/1994 and the 1988 Federal Constitution. DPU. https://direitoshumanos.dpu.def.br/dpu-completa-29-anos-de-implantacao/

[2] DPU. Dia Internacional da Pessoa Idosa: entenda como a DPU trabalha para esse grupo social. 01/20/2021 https://www.dpu.def.br/noticias-institucional/233-slideshow/64702-dia-internacional-da-pessoa-idosa-entenda-como-a-dpu-trabalha-para-esse-grupo-social

[3] **WORLD HEALTH ORGANIZATION.** Constitution of the World Health Organization: basic documents. 48th ed., including amendments adopted up to 31 december 2014. Geneva: WHO, 2014. Available at: https://www.who.int/es/about/governance/constitution.

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[6] MOURA, Bruno. Agência Brasil. Renda dos 10% mais ricos é 14,4 vezes superior à dos 40% mais pobres. 19 abr. 2024. Available at: https://agenciabrasil.ebc.com.br/economia/noticia/2024-04/renda-dos-10-mais-ricos-e-144-vezes-superior-dos-40-mais-pobres.

[7] **ORGANIZACIÓN PANAMERICANA DE LA SALUD (OPS).** Demencia. Available at: https://www.paho.org/es/temas/demencia.

[8] **SOUSA, R. M.** et al. Contribution of chronic diseases to disability in elderly people in countries with low and middle incomes: a 10/66 Dementia Research Group population-based survey. *Lancet*, [S.l.], v. 374, n. 9704, p. 1821–1830, 28 nov. 2009. Available at: https://doi.org/10.1016/S0140-6736(09)61829-8. Access on: 7 april 2025.

[9] BRASIL. Brazilian Institute of Geography and Statistics (IBGE). *Censo 2022: número de pessoas com 65 anos ou mais de idade cresceu 57,4 % em 12 anos*. Rio de Janeiro: IBGE, 2023. https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/38186-censo-2022-numero-de-pessoas-com-65-anos-ou-mais-de-idade-cresceu-57-4-em-12-anos

[10] BBC BRASIL. *Por que as mulheres vivem mais do que os homens?*. https://www.bbc.com/portuguese/geral-47132888.

[11] UNIVERSIDADE DE SÃO PAULO. Jornal da USP. *Mulheres vivem mais, mas com piores condições de saúde.* São Paulo: USP. https://jornal.usp.br/radio-usp/mulheres-vivem-mais-mas-com-piores-condicoes-de-saude/

[12] BOMFIM, Benedito Calheiros; BRITO, Ana. Rio de Janeiro: Ministério Público do Estado do Rio de Janeiro. https://www.mprj.mp.br/documents/20184/2630484/Benedito_Bomfim___Ana_Brito.pdf

[13] OEA. IACHR Refers Case Against Argentina to the Inter-American Court for Violations of the Rights to Judicial Guarantees, Judicial Protection, and Health of an Older Woman. 3/10/2024. https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/237.asp&utm_content=country-arg&utm_term=class-corteidh

[14] OEA. Case Nº 13,342 Rosa Angela Martino Argentina. https://www.oas.org/es/cidh/decisiones/Corte/2024/AR_13.342_NdeREs.PDF

[15] "The right to life is a fundamental human right, the full enjoyment of which is a prerequisite for the enjoyment of all other human rights. By virtue of the fundamental role assigned to it under the Convention, States have the obligation to ensure the conditions necessary to prevent violations of that right." Inter-American Court of Human Rights, Poblete Vilches et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs, para. 145.

[16] Lamas, Marta, "La perspectiva de género", *Revista de Educación y Cultura*, n.º 8, 1996, p. 216

[17] Lamas, op. cit., pp. 228-229.

[18] IACHR, *Poblete Vilches et al. V. Chile. (Merits, Reparations and Costs),* Judgment of 8 March, 2018. Series C No. 349. Para. 122.

[19] IACHR, *Poblete Vilches et al. V. Chile. (Merits, Reparations and Costs),* Judgment of 8 March, 2018. Series C No. 349. Para. 132.

[20] IACHR. *Ximenes Lopes V. Brazil*. Judgment of 4 july 2006. Series C No. 149. Para. 137 et seq.

[21] IACHR. *Furlan et al. v. Argentina. (Merits, Reparations and Costs),* Judgment of 31 august 2012. Series C No. 246, para. 134.

[22] IACHR. **Advisory Opinion 31/25**. The Content and Scope of the Right to Care and Its Interrelationship with Other Rights. 12 june 2025. Series A, No. 31

[23] *Idem,* **Advisory Opinion** 31/25.para. 183. The dimensions of the right to care also include: (ii) the right to provide care, which encompasses providing care under dignified conditions and free from discrimination; and (iii) the right to self-care, which entails attending to one's own physical, mental, and emotional well-being.

[24] *Idem*, **Advisory Opinion** 31/25 para. 187.

[25] RONCONI, Liliana M. Derecho a la salud: un modelo para la determinación de los contenidos mínimos y periféricos. **Salud colectiva**, v. 8, p. 131-149, 2012. Available at: https://www.scielosp.org/article/ssm/content/raw/?resource_ssm_path=/media/assets/scol/v8n2/v8n2a03.pdf
In the author's words: "A social reading of the principle of equality requires a non-neutral State, capable of recognizing social and cultural differences and adopting affirmative measures or differential treatment aimed at overcoming situations of disadvantage or marginalization affecting certain groups or historically excluded sectors of society (pursuant to Article 75(23) of the National Constitution)." (p. 143)

[26] MARTINI VIAL, Sandra Regina. Saúde: um direito fundado na fraternidade.**Saúde e Direitos Humanos**, p. 65-86, 2004.

[27] MARTINI VIAL, Sandra Regina. *Idem.* p.72. "New health policies cannot ignore these questions. Responses must be provided to these enduring questions: Whose body is it? Who cares for that body?"

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