

# Age Integration Aging Society

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## Issue Report I

### Global trends on elderly human rights\*



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Human rights are defined as the basic rights justifiably inherent in all human beings for them to live as human beings. The Universal Declaration of Human Rights interprets human rights more precisely, defining human rights as the basic rights that all human beings are entitled to for them to be human beings, beyond simply seeing them as "rights of man"<sup>1</sup>.

The elderly population is not exempted from all the rights of human beings. Older adults also are subject to human rights and are justly entitled to enjoy all rights entitled to humans. Therefore, elderly human rights refer to all rights required for the elderly to carry on their older adulthood with dignity and happiness.

Existing discussions on human rights have generally focused on identifying universal human rights and the current human rights situations for special groups of people, namely minorities, such as people with disabilities, women, children, and immigrants. The elderly are barely mentioned in Article 25 of the Universal Declaration of Human Rights. Further, the universal standards for elderly human rights based on international law have not been established yet<sup>2</sup>. Despite the rapid rate of population aging worldwide, no international law on elderly human rights with legal binding force has been enacted, unlike the case for female and children's rights (e.g., Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights

\* This short essay is partly based on my paper "The Human Rights of Elderly People from the perspective of Universal Human Rights Principles in International Laws" (Ju-Hyun Kim, Keong Suk Pak, Sang Lim Lee, In Hee Choi and Jeong In Sohn. 2011. "The Human Rights of Elderly People from the perspective of Universal Human Rights Principles in International Laws" Korean Journal of Law and Society 40(-), pp 249-278.)

of the Child), and effort to develop elderly human rights guidelines, such as those for people with disabilities, when developing the Convention on the Rights of Persons with disabilities, is lacking.

Since the 1980s, international standards, principles, or action plans related to the protection of elderly rights have consistently been published. With the global aging trend, international legal interests on elderly human rights are expected to rise in the coming years. Although no specific discussions pertaining to international laws related to elderly human rights have been initiated, international declarations and principles on elderly human rights tend to be devised in the form of soft law, such as decisions of international organizations and stipulations in conventions, which could potentially be advanced to hard law with actual binding authority, such as signed conventions and custom law. This is significant in that they become important norms in the corresponding field of law. In fact, various decisions and declarations made by many international organizations, with UN playing a central role, have a huge impact on the formulation, elaboration, and enforcement of international laws<sup>3</sup>.

### **1. Draft Resolution on a Declaration of Old Age Rights**

The UN published the Draft Resolution on a Declaration of Old Age Rights in 1948. This declaration outlines 10 rights, including rights to receive aid, basic rights to food, clothing, and shelter and labor, rights to receive physical and mental health care, rights to leisure, rights to safety and relief, and rights to be respected (A/C.3/213/Rev.1, Argentina, 1948).

### **2. The Vienna International Plan of Action on Ageing**

As the first international document on aging, the Vienna International Plan of Action on Ageing presents a guideline for considering and devising policies and programs for aging. The plan of action was approved with 37/51 votes at the 1982 UN general assembly and was adopted at the "World conference on aging" held in Vienna, Austria, in the same year.

The International Plan of Action on Ageing includes action plans for research, data collection, analysis, training, and education as well as 62 recommendations for various fields. Regarding "income stabilization and employment," clause 37 states that "government should promote participation of older adults in economic activities," and clause 41 states that "government should apply an international standard, particularly recommendation 162 of the International Labor Organization (ILO), regarding elderly workers."

### **3. United Nations Principles for Older Persons**

The UN principles for Older Persons was adopted at the 1991 UN general assembly with a 46/91 vote. The Principles for Older Persons present 18 principles that governments should consider in the following five domains: independence, participation, care, self-fulfillment, and dignity. These principles include content related to older adults' health and nutrition, protection of elderly consumers, residence and environment, family, social welfare, income security and employment, and education. Furthermore, it stresses the need to strengthen governments' and civil societies' competence and develop the elderly's potential to effectively cope with the aging of populations.

## 4. The Madrid International Plan of Action on Ageing (MIPAA)

In response to the global aging of populations, the second World Assembly on Ageing was held in Madrid, Spain, in 2002, and the 132-item Madrid International Plan of Action on Ageing (MIPAA) was adopted. The MIPAA aims to ensure all human beings live with dignity and in safety and to continue to participate in society as citizens with full rights in their older adulthood.

The MIPAA particularly presents a standard for policy actions in response to changes of population environments. It stresses the right to development among the elderly and emphasizes that aging and prohibition of discrimination against age should be included in the world development agenda. The purpose of the MIPAA is to ensure that all human beings in all places age safely and with dignity, and to continue to participate in their communities as citizens with full rights. Further, it urges governments to set the potential of the elderly population as the basis for development in the future and to include the following in their policies and programs. The first priority in policy direction is older persons and development.

More specifically, Article 12 of the Political Declaration states that the elderly's expectations and society's economic needs demand for the elderly's political, economic, social, and cultural participation. The elderly must be given continuous access to education and training programs, and they must be given the opportunity to engage in desired, satisfactory, and productive work. In other words, allowing the elderly to work and promoting their complete participation are important factors for promoting an energetic older adult population. One of the various key topics of the MIPAA is to "grant the elderly the opportunity to completely and effectively participate in society's economic, political, and social lives, including paid work and volunteering."

Since the publication of the 2002 MIPAA, the UN has recommended that each of its members develops measures to prevent age discrimination, neglect of the elderly, and abuse and violence against the elderly as well as measures to correct the negative image of older people; and has decided to regularly monitor compliance with the MIPAA among its member countries.

At the 64<sup>th</sup> UN General Assembly in July 2009, the UN Secretary General declared the need to enact a separate convention on the human rights of the elderly to ensure the protection of elderly rights. At the 65<sup>th</sup> UN General Assembly in December 2010, member countries resolved to form the Open-Ended Working Group on Ageing (OEWGA). Amid such global trends, the UN is highlighting the need to enact the Convention on the Rights of Older Persons<sup>4</sup>.

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## The problem of discrimination against the elderly and need for a human rights approach



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### Ageing population and the human rights of the elderly

The global population aged 60 or over is estimated to double from 962 million in 2017 to 2.1 billion by 2050 and triple to 3.1 billion by 2100.. Particularly, the number of persons aged 80 or over is projected to increase more than threefold from 137 million in 2017 to 425 million by 2050 and reach 990 million by 2100. (UN World Population Prospects, 2017).

All human beings wish to live long, and this desire for a long life has been realized more so in this aging society. However, on the dark side of this aging society, multiple problems related to the elderly have surfaced. According to a 2011 report by the UN secretary general, older adults worldwide are facing age discrimination, abuse, poverty, poor living standards, and lack of service, all of which were identified as serious human rights problems (UN, 2011).

As shown here, elderly human rights have surfaced as an important human rights issue in the international scene, primarily because the burgeoning elderly population has also increased the number of the elderly exposed to human rights violation and discrimination. Second, such human rights problems as a combination of discrimination, violence, abuse, neglect, and alienation among the elderly are emerging as new forms of human rights violation in the modern society. Third, the human rights problems experienced in older adulthood is inclusive of all human beings at least once in their lifetime.

### Discrimination against the elderly

Older adults are often perceived as dependent beings who are physically and mentally feeble, economically vulnerable, and in need of someone else's help. This stereotype or prejudice forces the elderly to remain in a subordinate position in society and face discriminatory treatment. Moreover, there are at least two types of discrimination against the elderly, including social position as an elderly (age), gender, disability, race, language, area of residence, and poverty. Particularly, the female elderly is highly vulnerable to discrimination caused by two factors: age and gender.

### Stipulations about discrimination in international human rights conventions

International human rights conventions stipulate for discriminations against race, women, and disabilities. The International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination, and the Convention on the Elimination of All forms of Discrimination

Against Women defines discrimination against women as all forms of distinction, exclusion, and restriction based on sex. The Convention on the Rights of Persons with Disabilities defines discrimination against disabilities as all forms of distinction, exclusion, and restriction due to a disability and states that it includes all forms of discrimination, including refusal to provide reasonable accommodation services.

The Convention of the Protection of Human Rights and Council Directive for Prohibition of Discrimination adopted by the Council of Europe categorizes discrimination into direct discrimination, indirect discrimination, and harassment.

### **1. Direct discrimination**

Direct discrimination occurs when an individual is excluded, refused, or subjected to unfair treatment based on age, sex, race and culture, religion, belief, disability, and sexual orientation without just cause. Direct discrimination against the elderly refers to exclusion, refusal, or unfair treatment based on social status set by age, and is known as age discrimination. Age discrimination is intensified by an interaction of other discriminatory factors, such as sex, disability, health, and socioeconomic conditions.

### **2. Indirect discrimination and discrimination caused by refusal to provide just accommodation**

Indirect discrimination occurs when a seemingly neutral regulation, standard, or custom poses a particular disadvantage to an individual compared to others for reasons such as age, sex, race and culture, religion, belief, disability, and sexual orientation. Unlike direct discrimination, indirect discrimination does not seem to cause discrimination on the surface and in form, but it is ultimately disadvantageous to an individual compared to others.

Refusing to provide reasonable accommodation is a type of discrimination that fails to provide human and material means and measures, such as amenities, facilities, tools, and services, that enable individuals to equally engage in activities as others.

### **3. Harassment**

Whether harassment can be considered a type of discrimination is controversial. However, in light of the fact that the convention on the rights of persons with disabilities includes stipulations about “freedom from torture or atrocious, inhumane, or humiliating treatment or punishment” (Article 15) and “freedom from exploitation, violence, and abuse” (Article 16), harassment can be considered a type of discrimination in a broad sense.

In the Toronto Declaration on the Global Prevention of Elder Abuse in 2002, the World Health Organization (WHO) acknowledged elder abuse as a global problem (WHO, 2002). Elder abuse is categorized into physical, mental, sexual, and emotional abuse. Among these, physical abuse has the gravest outcome: it takes a long time for an elderly to recover from even a mild injury. Furthermore, physical abuse not only continuously causes severe mental pain but also serves as a cause of early death in the elderly (UN, 2012).

## **Rationale of a human rights approach for elders’ problems**

The Universal Declaration of Human Rights and International Covenant on Economic, Social, and

Cultural Rights (ICESCR) state that all human beings are born free and equal in dignity and rights. As stipulated in these international human rights conventions, the elderly are not an exception to these rights to human dignity, health, and appropriate standard of living. Despite difficulties in historical traditions and socioeconomic conditions, the values of elder dignity and universal human rights are equal across countries.

Regardless of the fact that human dignity and basic rights are values that must not be damaged or diminished due to age, many older adults across the globe still face multiple problems such as poverty, suicide, abuse, discrimination, and social exclusion; many are even perceived as social burdens. To resolve these problems, it is important to shift the existing paradigm in which older adults are viewed as subjects of welfare and policies to one that takes on a human rights perspective. The most effective measure to establish this goal is to formulate a binding international legal document that stipulates elder rights, namely the Elder Rights Convention (tentative).

## References

- 1 Council Directive 1997/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.
- 2 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- 3 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- 4 The Convention on the Elimination of All Forms of Discrimination against Women.
- 5 The Convention on the Rights of Persons with Disabilities.
- 6 The European Convention for the Protection of Human Rights and Fundamental Freedoms(ECHR), The Council of European.
- 7 The International Convention on the Elimination of All Forms of Racial Discrimination.
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## Human dignity and the unique situation the elderly faces in the Korean society



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### 1. Human dignity and right to self-determination

One of the essential things for human beings in order to live with dignity is to guarantee the living ways as they choose. Although people might repeatedly realize that their own choices were wrong, all the failures can be valuable assets that contribute to their personality. Indeed, people may seek advice from others during any specific decision making process, but the final decision making should be up to them. Otherwise any result, whether a success or a failure, could not become their own. Needless to say, it is also important to encourage children to make their own decisions in accordance with their mental and emotional maturity. Article 12 of the UN Convention on the Rights of the Children stipulates that it is the contracting nation's duty to implement measures that enable children to freely express their opinions on matters that may affect them and that they reflect on these opinions appropriately. Article 12 of the UN Convention on the Rights of Persons with Disabilities states that the right to self-determination should be ensured even for adults with physical and mental disabilities and that supported decision making system should be provided for persons with those disabilities. The Constitutional Court of Korea ruled that the right to self-determination is included in the basic rights stated in Article 10 of the National Constitution, which stipulates that all humans have dignity and are entitled to the basic right to pursue happiness (Based on that Article, the Constitutional Court acknowledged sexual self-determination rights (Constitutional Court ruling 89Heon-ma82 on Sep 10, 1990), freedom of contract (Constitutional Court ruling 89Heon-ma204 on June 3, 1991), and consumers' self-determination rights (Constitutional Court ruling 96Heon-ga18 on Dec 26, 1996) as basic rights, rights to freedom of actions in general, derived from the right to pursue happiness ). Korea's civil law also stipulates that all humans have legal capacity to have rights and duties from birth (Article 3 of Civil Law) and that everyone has the right to exercise one's rights and duties without anyone else's intervention once they reach the age of 19.

### 2. Unique situation the elderly faces in Korea

Irrespective of where any society is located, older adults have traditionally been socially respected and revered for their experience and wisdom. Asian countries, which have heavily been influenced by Confucianism, have long held the belief that the age of 60, called esoon (耳順), is an age in which people are able to immediately understand others owing to their experience, thoughtfulness, and mature judgment; and the age of 70, known as jongshimsoyokbulyoogoo (從心所欲 : 不踰矩), is an age in which people cannot violate the custom regardless of what they do.

The basis for the respect accorded to older adults as seniors of the society is the fact that older adults have a mature understanding of the society and its members based on their accumulated experiences, and that, because of this, they can serve as an example for the younger generations and also give advice.

However, the elderly in the Korean society are placed in a unique situation. Born in the days when feudalistic ideals and imperialistic ideals coexisted, the elderly today have experienced a rapid capitalistic transformation of the society, which has at the same time been under the prevalence of totalitarian ideals in a dictatorial government. That being said, the dictators were several times turned over by democratic resistance of Korean people, and awareness of democracy, liberalism, and human rights has become raised in Korean society. Thus, the Korean society is uniquely characterized by a mixture of various contradictory ideals and beliefs. The elderly today, who have already retired, are a generation that cannot easily adjust themselves to the rapidly changing social ideals and beliefs, particularly to liberalism or value of human rights. They find these new values strange, and their out-of-date values are no longer exemplary to the younger generations. Because of this, older adults become no longer revered and cannot serve the role of seniority. Furthermore, older adults have difficulties adapting to the overwhelming changes of technology, which, in turn, degrades them to the position of help and support from others. In such an unfamiliar technical environment, new values and social order, older adults become more and more unable to make their own decisions without assistance from others. In Korea, the elderly become more often subject to support than they actively engage in decision makings.

On the other hand, adult children today do not support their old parents' decision-makings, although older parents have held on to the traditional belief that their adult children will take care of them in their old age if they sacrifice themselves for their children during their prime years. We can infer this from the fact that families became nuclearized in the 1980s with industrialization and urbanization and that nearly 20% of the entire elderly population live alone without family assistance.

### **3. Social task to ensure a decent life for the elderly**

An advertisement made by the Korean Supreme Court reads that the new adult guardianship system that was implemented on July 1, 2013 is an alternative to helping the elderly make decisions so that Korean society becomes more humane. However, this is far from the truth. First, the adult guardian is not chosen by the older adult himself and herself, and second, the guardian does not support the older adult's decision-making but makes decisions on behalf of the older adult. Hence, the guardian does not play the role of the older adult's advocate who respects their hopes, needs, and preferences and who speaks for him and her. Instead, the guardian is a best interest decision maker from a third-person point of view regardless of whether the decision really meets the older adults' will and preferences. Third, there are more than 300 legal provisions that disqualify older adults' rights, positions and once either full guardianship or limited guardianship opens. As shown here, the adult guardianship system fundamentally violates human rights. Therefore, guardianship system should be a last resort in case of necessity. Otherwise, human rights violation could not be minimized.

Can there be any system that supports the elderly to live their own lives to their will and preferences until their last breath? Further, is there a way to implement such that system? The most important thing is to guarantee that the elderly are provided with things and services according to their will and preferences by respecting their opinions—even if they have difficulty

communicating verbally—that are expressed through various means, including facial expressions and emotions. However, it is not easy to practice this in the real world. Therefore, there needs to be a system that lets the elderly make their future plans when they are still capable of communication, and guarantees that they live according to these plans. Some alternatives include a system of continuing power of attorney, whereby older adults designate their representative beforehand and allow the designated representative to support or represent the older adult's decision-making with their will and preferences respected, a system of advance medical directives. Whereby older adults specify in advance their will and preferences regarding medical treatments and care, and a system of trust services for the elderly, whereby money for their daily needs, care, and medical treatments can be stably provided for. To introduce these systems, enlightening and educating not only the elderly but also the general public would be crucial. Particularly, because the older adults in Korea are a generation deprived of the opportunity to acquire awareness on the importance of exercising right to self-determination, it is critical to continuously educate them. Making such arrangements for the future is the least we can do to compensate for the countless sacrifices the older adults have made for their families, society, and nation.

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## Signed MOU with the Center for Excellence in Elder Law at College of Law of Stetson University

EIAIR signed an MOU for research cooperation with the Center for Excellence in Elder Law at College of Law of Stetson University of the US in May 2018. The Center for Excellence in Elder Law—a research center specializing in elder law demonstrating world-class research and education performance—is expected to significantly contribute to drawing Korean implications for realizing an age-integrative society based on their advanced and global experiences of law system maintenance. To sign this MOU, Professor Cheoljoon Chang, a joint researcher at EIAIR, flew over to the Center in February 2018 to academically interact with elder law scholars. He also attended Professor Rebecca Morgan’s (Stetson University, College of Law) elder law seminar to introduce and discuss Korea’s elder law. In the upcoming mid-October, Professor Roberta Flowers (Stetson University, College of Law) will visit Korea and give a presentation on the adult guardianship system and legal support in the Age-integration Forum hosted by EIAIR.

## Hosted an International Seminar

EIAIR hosted an international seminar on April 24, 2018 (1 PM) in room 251 of the Posco Building at Ewha Womans University. Swiss Professor Peter J. Schulz (University of Lugano, Faculty of Communication Sciences) gave a presentation and led discussions about “Decision-making processes among the elderly: From involvement in treatment negotiations to influenza vaccination decisions”



## The 9<sup>th</sup> and 10<sup>th</sup> Age-Integration Forum

The 9<sup>th</sup> Age-Integration Forum, hosted by EIAIR, was held on April 20, 2018 (4 PM) in room 251 of the Posco Building at Ewha Women’s University. Professor In-Hwan Park (Inha Law School) gave a presentation under the topic “Human rights protection and guardianship program for adults with cognitive disabilities,” and Professor Chul-Joon Chang (Department of Law, Dankuk University) participated as a discussant.



The 10<sup>th</sup> Age-Integration Forum was held on May 11, 2018 (4 PM) in room 251 of the Posco Building at Ewha Womans University. The topic of this forum was “Elderly drivers in the Korean Society,” and professor Moon-Jung Choi (Graduate School of Science and Technology Policy, KAIST) gave a presentation about the future of digital shift and changes of user experiences. Dr. Sung-Ho Lee (Korea Development Institute) participated in the discussion.



## Age-integration and generation-integration survey

EIAIR conducts our brand survey, the “Age-integration and generation-integration survey.” This survey, comprising components focused on surveying currently existing intergenerational conflicts and discrimination in the Korean society and whether people’s perceptions are in line with their actual behaviors, aims to identify implications for generation education programs and policies so as to promote an age-integrative society with intergenerational harmony. The survey is conducted on 1,000 adults aged 18 years or older sampled with respect to sex and regional distribution, from July to August 2018.

- ▶ This research institute provides *Age Integration Aging Society Issue & Focus* in order to introduce domestic and/or international research trends of age integration, best research, related laws and policies to academia and institutions.
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