Human Rights of Older Persons
20th Informal ASEM Seminar on Human Rights
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Human Rights of Older Persons

Seminar Proceedings of the 20th Informal ASEM Seminar on Human Rights (ASEMHRS20)

22 – 24 February 2021

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The global health crisis created by the COVID-19 pandemic brought the needs and vulnerabilities of older persons to the forefront. It has exacerbated pre-existing human rights gaps, putting pressures on countries to address the existing policies and practices surrounding the elderly.

In the absence of a binding international instrument that comprehensively addresses the human rights of older persons or guarantees equality and non-discrimination on the basis of older age, efforts to improve national protection and enforcement of existing legal instruments are necessary to strengthen the promotion and protection of human rights of older persons.

To address the challenges of the ageing population in Asia and Europe, over 130 participants came together to discuss the issue of Human Rights of Older Persons at the 20th Informal ASEM Seminar on Human Rights (ASEMHRS20) held on 22-24 February 2021, which, for the first time, was held as a hybrid event.

The Seminar brought together experts, academics, and government representatives from 44 countries in Asia and Europe, who shared their experiences and knowledge over three days of intensive online exchanges. We would like to express our deep appreciation for their commitment and participation.

The Seminar findings and recommendations come at a very timely moment, when international cooperation and sharing of best practices and policies are imperative to uphold the rights of the elderly on an equal basis with others.

The Asia-Europe Foundation (ASEF) was privileged to co-organise this Seminar and provide a platform for international dialogue and cooperation on the human rights of older persons.

On behalf of ASEF, I would like to extend my thanks to all the participants who made the 20th Informal ASEM Seminar on Human Rights a successful and enlightening event. Even though this time we came together virtually, we hope that Seminar enabled participants to collaborate and create networks across Asia and Europe for future discussion and action.

We are particularly grateful to our co-hosts for ASEMHSR20, the Ministry of Foreign Affairs of Republic of Korea, the ASEM Global Ageing Center (AGAC) and the National Human Rights Commission of Korea, for their support in coordinating and planning the event in a time fraught with challenges and uncertainties.

We would like to extend special thanks to our keynote speaker, Dr Claudia MAHLER, Independent Expert on the enjoyment of all human rights by older persons, and Ms Amal ABOU RAFEH, Chief of the Programme on Ageing Unit, Department of Economic and Social Affairs, United Nations (UNDESA). Their extensive insights and reflections elevated the discussions and the overall experience of the Seminar. We would also like to thank our co-organiser Ms Eun-Hee CHI, Executive Director, ASEM Global Ageing Centre (AGAC), for her enlightening welcome, as well as Ms Young-ae CHOI and Ambassador Maria CASTILLO-FERNANDEZ for their encouraging remarks.
Our deep gratitude goes to Professors Titti MATTSSON, Andrew BYRNES, Jolanta PEREK-BIALAS and Yeong-Ran PARK for their expertise and commitment as rapporteurs. Our main rapporteurs Professors Titti MATTSSON and Andrew BYRNES worked tirelessly to share their invaluable knowledge with us through their comprehensive background paper, which provided the foundation for our Seminar discussions.

Our warm thanks must be conveyed to our four moderators, Mr Rio HADA, Mr Srinivas TATA, Dr ZHANG Wenjuan, and Ms Bridget SLEAP for their expert facilitation of the working groups. We would also like to thank Ms Hye-Kyung LEE for delivering the closing remarks, as well as Mr Rolf RING from Raoul Wallenberg Institute and Mr Achsanul HABIB from the Ministry of Foreign Affairs of Indonesia for their facilitation, and Ms Jenny PIAGET for closing on behalf of our co-organisers.

Once again, we express our sincere gratitude to the co-organisers of the Seminar series, the Raoul Wallenberg Institute, the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Federal Department of Foreign Affairs of Switzerland, and the Ministry of Foreign Affairs of the People’s Republic of China, who continue to provide valuable support and assistance at each Human Rights Seminar. We would also like to thank our Steering Committee for providing their invaluable assistance and support so that we can ensure that each Seminar remains highly relevant.

Finally, I would like to thank all of the staff of the Asia Europe Foundation, in particular: Dr Yannick BINEAU, Ms Armi Hannele AARNI, Ms Iulia LUMINA, Ms Elizabeth DY, Ms Trishia P OCTAVIANO & Mr Simon PIOLDI. Their tireless work and dedication in the planning and execution of ASEMHRs20 are what made this event possible.

Ambassador Toru MORIKAWA  
Executive Director  
Asia-Europe Foundation (ASEF)
It is now time to act to promote and protect the human rights of older persons

Eun-Hee CHI
Executive Director
ASEM Global Ageing Centre (AGAC)

(Official welcome at the 20th Informal ASEM Seminar on Human Rights)

Distinguished guests, experts of ASEM partners who are joining us online, I thank all of you for your participation in the 20th Informal ASEM Seminar on Human Rights.

ASEM Global Ageing Center is an institution tasked with protecting and promoting the human rights of older persons of ASEM partners, and it is a great pleasure for us to be hosting the Seminar in Seoul. This time under the theme of the ‘Human Rights of Older Persons’.

Allow me to express my sincere gratitude to those who have enabled this meaningful opportunity – Executive Director of the Asia-Europe Foundation, His Excellency Toru MORIKAWA; Minister of Foreign Affairs of the Republic of Korea, His Excellency CHUNG Eui-yong; Chairperson of the National Human Rights Commission of Korea, Madame CHOI Young-ae; and Ambassador of the European Union to the Republic of Korea, H.E. María CASTILLO-FERNÁNDEZ.

And the UN Independent Expert on the enjoyment of all human rights by older persons, Dr. Claudia MAHLER, and Professor Titti MATTSSON and Professor Andrew BYRNES. You have my deepest appreciation for serving as our keynote speaker and main rapporteurs.

This is the first time the Informal ASEM Seminar on Human Rights Series addresses ‘Human Rights of Older Persons’ and also the first time the Seminar is held online.

In this regard, there are many firsts and difficulties in preparing for this Seminar. But given that the human rights of older persons are urgent issues, particularly in this period of the pandemic, the seminar is timely indeed for ASEM partners who are experiencing population ageing and the COVID-19 pandemic at the same time.

The pandemic has reminded us that although the virus does not discriminate, its damages are disproportionate. It has also shown that the lives of older persons are the most affected. Not only has COVID-19 threatened the health and lives of older persons, but it also has exacerbated ageism across our society, stigmatising them further as weak and vulnerable, a burden to society.

But such violation of older persons’ rights is not newly emerged by COVID-19. The pandemic is simply uncovering ageism that has been deeply rooted in our society.
In 2015, the Global Alliance for the Rights of Older Persons (GAROP) conducted a survey on ageism in 50 countries. Around 2,000 older persons who took the survey responded that they were excluded from social or policy priority, ignored, avoided or disrespected, subjected to various forms of violence or abuse, even forced eviction, neglect, or abandonment.

So far, there have been numerous discussions on older persons’ rights in the international society, including the adoption of the UN Principles for Older Persons in 1991, the Madrid International Plan of Action on Ageing in 2002, the UN Open-Ended Working Group on Ageing that has had sessions every year for a decade since 2011, and the GANHRI Working Group on Ageing since 2016.

These efforts notwithstanding, even to this day in 2021, older persons’ diversity and rights are neither respected nor seen as a policy priority. And older persons’ contribution to and their role in our society are not fully recognized.

One of the reasons ageism and age discrimination are still prevalent, and even worsening during the pandemic era, can be found in the absence of an international convention on older persons. Where there are conventions on the rights of women, children, people with disabilities, and migrant workers, the lack of one for older persons implies that age-based discrimination is legitimate and even socially accepted.

In this context, our discussions devoted to the rights of older persons for the next three days will be an important opportunity for us to build collective understanding and seek mutual cooperation for our role to protect and promote older persons in the absence of a legally binding instrument. Because words alone are not enough. It is now time to act.

I look forward to your insights and ideas on what we can do to protect and promote the human rights of older persons. I once again welcome and thank all the participants and distinguished guests for your contribution and participation in the 20th Informal ASEM Seminar on Human Rights.
Greetings from Seoul! I would like to extend my congratulations on the opening of the 20th Informal ASEM Seminar on Human Rights. And as Chair of the Working Group on Ageing of the Global Alliance of National Human Rights Institutions, I am very pleased to participate in such an important human rights seminar.

The Informal ASEM Seminar on Human rights has been held over the past 20 years and this is the first time that the Seminar focuses on the topic of the rights of older persons.

This year's topic clearly shows that ageing and older people's rights are one of the most pressing human rights issues of our time that can no longer be ignored.

In this regard, I would like to thank the ASEM Global Ageing Center and the Asia-Europe Foundation for their hard work to organise and host the Seminar.

Ageing is one of the most critical human rights issues we all face. Despite awareness-raising efforts and other activities of the UN General Assembly, UN Secretary-General and related organisations, ageing remains one of the key challenges facing humanity.

In particular, the spread of COVID-19 aggravates the situation of older persons who are already vulnerable both physically and economically.

Accordingly, the National Human Rights Commission of Korea is taking swift action to protect the rights of vulnerable groups during the pandemic. Recognising the particular vulnerabilities of older persons in the pandemic situation, the Commission is making it a top priority to protect basic rights of older persons such as the right to life and is stepping up efforts in this regard at the national and international levels.
Last year, the Commission distributed international guidance on COVID-19 and human rights to domestic organisations in a prompt manner to prevent human rights violations in times of COVID-19, while sharing our activities related to COVID-19 with the international community.

According to documents submitted to the UN General Assembly, older persons are faced with four key challenges of discrimination, poverty, violence, and the lack of concrete policies or support. These challenges are directly linked to issues we discuss today.

I hope this Seminar offers an opportunity for experts and participants from different backgrounds to put their heads together and find a solution to these challenges and look forward to substantial results from the upcoming session of the UN Open-Ended Working Group on Ageing this year based on the outcome of today’s discussion.

Lastly, I would like to ask all of you to support the ASEM Global Ageing Center in its endeavours to protect and promote the rights of older persons as a global hub located in Korea to advance older person’s rights.

I thank you once again for your participation and wish you and your family good health.
Keynote Address

Paradigm shift needed on the inclusion of older persons in society at all levels

Claudia MAHLER
Independent Expert on the Enjoyment of All Human Rights of Older Persons

(Keynote address at the 20th Informal ASEM Seminar on Human Rights)

First of all, I would like to thank the organisers, in particular the Asia- Europe Foundation, for the kind invitation to deliver the keynote speech to the 20th Informal ASEM Seminar on Human Rights on the Human Rights of Older Persons.

We are meeting in a difficult time; a time that clearly shows the shortcomings of our human rights system with regard to older persons. The pandemic put a spotlight on existing protection gaps in the international legal framework which we need to close through our joint efforts.

This is why only three months after taking up my functions, my first report as the independent expert on the enjoyment of all human rights by older persons and the mandate’s first report to the General Assembly, focussed on COVID-19 and the human rights of older persons. The report examined the legal framework governing rights to health, adequate standard of living, palliative care and age discrimination, contextualised them in the onset of the pandemic, looked at their impact on older persons, and provided recommendations in those areas.

To inform a human-rights based approach to older persons in the context of COVID-19, there continues to be an urgent need for disaggregated data, which was also the focus of the last thematic report submitted to the Human Rights Council. This need will remain valid when States tackle prevention and continued response to the spread of the pandemic.

The pandemic illustrated tragically that the ageist approach has been vivid around the world at times when solidarity between generations is crucial, and stigmatising language should not be tolerated. Governments must monitor and implement measures to prevent ageist approaches, which can lead to older persons experiencing abuse, violence, and neglect.

Measures to protect the human rights of older persons, including their right to health during the pandemic, must be in compliance with human rights law and not discriminate on the basis on age. Any measures to contain the virus, including isolation measures targeted at protecting older persons from contracting it, should be in respect of the autonomy, independence, and dignity of older persons. Older persons must be consulted. The absence of age as a clear ground for discrimination reveals a clear gap in the international human rights framework.
Autonomy and independence of older persons was and is still at stake during the pandemic. We have witnessed that older persons did not get sufficient support to live independently. During the crisis, the autonomy of older persons was not seen as a basic human right and older persons were unable to make their own choices because they were not fully informed and therefore their options were narrowed.

Autonomy is a core principle of the Convention on the Rights of Persons with Disabilities (CRPD). Even though ageing is not associated with disability, the legal framework can provide guidance on the scope of the concept of autonomy, as well as apply to older persons with disabilities.

In the United Nations Principles for Older Persons, the principle of independence describes the importance for older persons to have access to adequate food, water, shelter, clothing, and health care, through the provision of income, family and community support, and self-help. Likewise, older persons should have the opportunity to find paid work or have access to education and training to allow them to live independently.

In light of the intensity of ageing in many societies, there is a need to ensure that older persons are enabled to lead autonomous lives. This calls for a paradigm shift that focuses on the inclusion of older persons in society at all levels, encompassing age-friendly communities and environments, and promotes the autonomy and dignity of older persons.

The realisation of the right to an adequate standard of living is essential to preventing the social exclusion of older persons. It is considered to be indispensable to the fulfilment of all other rights and encompasses all the basic subsistence rights. The aim is to ensure that everybody is able to live in conditions of dignity, in which they are able to satisfy their needs and interact with others.

Exclusion from material and financial resources in later life is one of the manifestations of social exclusion. Poverty can exacerbate the denial of basic human rights as well as limit choices and opportunities for a tolerable life. In many societies, older persons comprise a disproportionate number of the poor, the persistent poor and the poorest among the poor.
The important role of social protection is recognized in several international and regional instruments and should be fully implemented and enforced in order to promote the autonomy of older persons.

Not receiving a pension or not having insurance often inhibits older persons from seeking medical attention, putting them at a higher risk of social isolation and of being denied access to health care. Financial services, such as loans or mortgages, or insurance, are often not available to older persons or are prohibitively expensive because of the inappropriate use of age as a criterion, including for determining risk.

Previous reports issued by the mandate recommend that States recognise the human right to social security in domestic law. Non-contributory and contributory pension schemes must be guided by international human rights standards for the right to social security. States should develop social protection and poverty-reduction programmes, particularly designed for older persons, including those with disabilities.

Older persons have much to contribute, based on the considerable skills, wisdom, expertise, and experience they have acquired throughout their professional life, and they should be encouraged to continue working if they wish. Therefore, voluntary work, workplaces, and job options that include older workers should be developed. Older persons have indispensable roles in assisting peers and participating in intergenerational activities by helping younger generations, and by contributing to the education of grandchildren. This will help reinforce social cohesion and the interaction of older persons with other members of the community.

Mandatory retirement ages and age discrimination in recruitment procedures prevent older persons from their right to work and may further social exclusion. Older persons have a right to decide whether they want to work and what job is suitable for them. Women tend to be more disadvantaged with regard to formal and informal job opportunities.

The promotion of lifelong learning is essential for older persons to be able to deal with constantly changing circumstances, requirements, and challenges for their active participation in society and for an autonomous life continuing into old age.
Lifelong learning is not only a precondition for longer participation in the labour market, it also affects the social integration of older persons. At the same time, it is important to maintain a range of programmes that do not exclusively target older persons, as that would be limiting and could lead to the creation of social spaces of exclusion. The specific needs of older persons should be taken into account in the planning and design of educational offers as older persons learn differently from younger ones.

Distance learning and digital training should be offered to older persons in order to bridge the gap between generations and avoid dependency on others as a result of lack of knowledge of information and communications technology.

In conclusion, let me end with the message that ageism cannot be tolerated and we need to combat ageism and age discrimination – the international, regional, and national legal framework must cover all forms of age discrimination and this includes remedies and redress.

A legal framework is the first step to ensure that the rights are implemented which in practice leads to new approaches on older persons. It is time to implement a human rights-based approach which will lead us to the shift to show that older persons are rights holders.

We need to break down barriers which hinder older persons from the full enjoyment of their human rights, and we must close the existing gaps and realise that a comprehensive international treaty would make a difference for the enjoyment of all human rights by older persons. I am looking forward to our joint actions to achieve this goal.
Introduction

Urgent need to address ageist attitudes and polices that deny older people their human rights

The human rights of older persons, a topic that had been gaining increasing attention over the last few decades in the context of global population ageing, have been cast into high relief by the COVID-19 pandemic. The impact of the pandemic on older persons has highlighted and exacerbated existing patterns of ageism and discriminatory social structures and practices around the world. It has also raised fundamental questions about the adequacy of existing rights regimes and institutions to ensure that everyone is entitled to the full enjoyment of their human rights and fundamental freedoms without discrimination on the basis of older age. These topics were taken up at the 20th Informal ASEM Seminar on Human Rights.

The 20th Informal ASEM Seminar on Human Rights engaged with the topic of the ‘Human Rights of Older Persons’ and, in light of the impact of the pandemic, took place at a critical juncture. The Seminar was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Swiss Federal Department of Foreign Affairs, and the Ministry of Foreign Affairs of the People’s Republic of China. The Seminar brought together over 130 official government representatives and civil society experts, representing 44 ASEM Partner countries, to discuss the extent to which the human rights of older persons or in older age were protected and what concrete measures could be taken by States and other stakeholders to improve the realisation of the human rights of older persons at international, regional, and national levels.

The Seminar ran for three days from 22 to 24 February 2021. For the first time the Seminar was held both physically, in Seoul, Republic of Korea, and virtually. Representatives from governments, international and national human rights bodies, civil society groups, academia, and others participated in the discussions. A background paper for the Seminar was prepared by Professors Andrew BYRNES (Australia) and Titti MATTSSON (Sweden).

The Seminar was addressed by several speakers who reflected on the importance of focusing on the human rights of older persons, the implications of the pandemic for those rights, and the challenges that faced societies more generally as they experienced population ageing. These included Ambassador Toru MORIKAWA, Executive Director of the Asia-Europe Foundation (ASEF), Ms Eun-Hee CHI, Director of the ASEM Global Center on Ageing (AGAC), Ms Young-ae CHOI, Chairperson of the National Human Rights Commission of Korea, and Ms María CASTILLO-FERNÁNDEZ, Ambassador, Delegation of the European Union to the Republic of Korea. The Seminar was privileged to receive a keynote address by the United Nations Independent Expert on the enjoyment of all human rights by older persons, Dr
Claudia MAHLER, as well as closing reflections from Ms Amal ABOU RAFEH, Chief of Programme on Ageing Unit at the United Nations Department of Economic and Social Affairs (UNDESA), and closing remarks from Ms Hye-Kyung LEE, Chair of the AGAC Board of Directors (on behalf of the hosts) and Ms Jenny PIAGET, Federal Department of Foreign Affairs of Switzerland (on behalf of the organisers).

The Seminar also convened a panel on the theme ‘the Promotion and Protection of Human Rights of Older Persons in the Post COVID-19 Era’ virtually and in Seoul with participants drawn from academia, government, civil society organisations, and national human rights institutions. The Seminar also convened four working groups, each of which discussed several cross-cutting questions and a specific thematic topic:

- WG1: Autonomy and Independence of Older Persons
- WG2: Social Protection and Human Rights of Older Persons
- WG3: Age Discrimination against Older Persons Focusing on Labour Markets
- WG4: Empowerment of Older Persons through Education and Training.

This report summarises and synthesises the Seminar presentations, discussions, and conclusions. The report includes reports by the four rapporteurs assigned to each of the Seminar working groups: Professor Titti MATTSSON of the Faculty of Law, Lund University; Professor Andrew BYRNES, Emeritus Professor of Law, Faculty of Law & Justice, University of New South Wales, Sydney; Professor Jolanta PEREK-BIALAS, Jagiellonian University, Craców; and Professor Yeong-Ran PARK, Kangnam University, Yongin.
Key Messages

The Nature of Ageing, Human Rights in Older Age, and the Diversity of Older Persons

The ageing of global populations has meant that more people are living longer than ever before and that the number and percentages of older persons in national populations have grown and will continue to grow in the coming decades. Global population ageing is often presented primarily as a problem. Such assessments often draw on concepts such as ‘dependency ratios’ that neglect the economic and social value of the work and other contributions of older persons or fail to recognise that patterns of behaviour as people and societies age may change.

‘Older persons’ and ‘older age’ are socially constructed concepts the meaning of which varies between and within societies. While chronological age is often used to determine the threshold of older age, ageing cannot be simply reduced to this: it has chronological, biological, psychological, and social dimensions. Given the diversity of people’s experience of ageing, chronological age is an imperfect proxy for identifying whether particular persons have specified characteristics and may be based on ageist stereotypes.

Older persons are extremely diverse in their experiences and characteristics and this needs to be taken into account in developing policy in relation to ‘ageing’ – race, sex, gender, disability, indigeneity, socio-economic status, rural/urban location, and migration status, are just some factors that influence how a person experiences ageing and the intersectional nature of discrimination they encounter. A person’s experience of ageing also reflects (dis) advantage at earlier stages of their life, so it is necessary when thinking about ageing issues to adopt a life course approach.

Intergenerational (in)equity has been part of the debate around the implications of population ageing; it is often asserted that the current and likely future allocation of resources to services for the older population takes away from resources that should be more fairly allocated to younger groups in society. We need to foster intergenerational relationships - in families, workplaces, and many other social situations. Intergenerational relationships already perform important human, social and economic functions and have been shown to help to eliminate ageism and prejudice against both younger and older persons on the basis of age and to enhance the enjoyment of human rights by all.

Ageism is a Serious and Widespread Problem

Ageism is the treatment of a person or group of persons based on their actual or assumed age (generally chronological or relative age) and/or stereotyped characteristics attributed to persons of that age. It is directed against both older and younger people and may involve both adverse treatment or apparently benevolent treatment (which may nonetheless have adverse effects). Ageism is discriminatory because it is based on stereotypes that all persons of a particular age share similar qualities and thus involves the treatment of individuals without regard to their actual abilities and characteristics. A human rights violation in itself, it leads to violations of other human rights.

Ageism against older persons generally involves stereotypes that assume all older persons experience significant physical and mental decline, lack capacity to adapt to changing circumstances or to learn new skills, and do not contribute in economic and social terms. Such attitudes are often accompanied by a devaluation of older persons as human
beings and the discounting of the value of their lives. Ageism has a significant impact on older persons’ physical and mental health, as many people internalise the stereotypes and devaluation that is reflected in ageist attitudes, practices, and institutions in society. It has significant economic and social costs in addition to its human impact.

The Extent and Adequacy of Legal Protection of the Human Rights of Older Persons

The international human rights system provides little explicit protection of the human rights of older persons or against discrimination on the ground of older age. Older persons, like other persons, enjoy the rights guaranteed under international and regional human rights treaties. However, the absence of an explicit recognition of ageism and age discrimination and of rights based on an understanding of the nature and significance of the ageing process have meant that in practice the types of violations suffered by older persons are not particularly visible in the international human rights system.

At the regional level in Europe and Asia, there are different levels of protection; Both the Council of Europe and the European Union provide some international and supranational protections against discrimination on the ground of age and guarantees of the right to social protection. However, some participants consider that these have limited scope and have had limited practical impact. In Asia there is even less explicit recognition in regional or subregional human rights instruments of the need to provide such protection; and there is no binding regional/subregional human rights treaty of general application or relating explicitly to older persons that addresses the issue effectively.

Older persons are often unaware of their rights and the procedures available to them to vindicate those rights (where such rights and procedures exist). Older persons often face delays, significant financial constraints, accessibility, and other barriers to their obtaining timely and effective remedies for violations. Individual complaints-based systems are often not the most effective means of challenging systemic discrimination or bringing about policy change and there is a need to develop better procedures.

Some participants believe that a new United Nations treaty on the human rights of older persons could provide a useful framework for policy development, a rallying point for solidarity and advocacy, or could lead to increased capacity and rights literacy among older persons and would provide a useful procedure for regular external international review that could stimulate change. However, it was stressed by other participants that progress might also be achieved by better use of existing standards and national and international procedures.

Autonomy and Independence of Older Persons

Autonomy and independence have a fundamental importance for everyone, including older persons. They are free-standing rights as well as cross-cutting ones that influence and enable the enjoyment of other rights. Older persons enjoy a universal right to the protection of their autonomy and independence. The realisation of this right may vary in different national and local contexts, though should always be directed to giving effect to the will, preferences, and decisions of older persons.

Autonomy is the ability to exercise freedom of choice and control over decisions affecting one’s life. It is the right to exercise control over
Key Messages

one’s life, to make one’s own decisions and to have those decisions respected. Independence encompasses the right to live in the community without assistance or with any care and support required to allow a person to exercise their independence, without having others make decisions for them. It also includes the ability of a person to perform functions of daily living, to be able to carry out one’s decisions in practice and to be able to remain fully integrated in society.

Older persons value autonomy and independence highly but are often not able to make their own decisions about their everyday life and choices in terms of financial and other matters. This is frequently the result of ageism and discrimination, traditions and customs and negative attitudes in society and family.

There is a risk of increased social isolation for older persons due to changes in society, including rapid digitalisation and increasing generation gaps (geographically as well as social). Many older persons face barriers to participate fully in the community and to make contributions to society.

Older persons and their representative organisations have the right to be consulted about and participate in policymaking of all kinds. Often policies are adopted without such consultation or participation and without specific regard to the potential impact on older persons.

Social Protection and Human Rights of Older Persons

Many societies have undergone fundamental changes in family structures that mean that assumptions that families would be the principal source of care and support for older persons no longer hold (even assuming older family members always preferred such arrangements). State support in the form of social pensions, or other support to supplement private resources is critical.

Significant differences exist between Europe and much of Asia (especially in lower and middle-income countries) in relation to social protection in older age. In Asia, a much smaller percentage of the population has access to employment-related or contributory pension systems, and a much higher percentage of people (especially women) work in the informal economy. Thus, the extension of social pensions to a greater percentage of the population, as well as ensuring they are adequate to support a decent standard of living, is a priority.

Age Discrimination against Older Persons Focusing on the Labour Markets

Older persons often experience ageism in the labour market, which leads to their exclusion from opportunities to enter, re-enter or remain in the labour force and consequently their ability to enjoy an adequate standard of living. Such discrimination often starts in mid-life rather than at the later stages of life that governments and employers often define as ‘older age’ by reference to chronological age thresholds (such as 60+ or 65+), ‘standard retirement age’ or pension eligibility. Older women face particular forms of discrimination, and discrimination at earlier stages in their life has a significant impact on any benefits that they receive under contributory pension arrangements.
Mandatory retirement ages raise complex issues of discrimination. Prima facie, they are discriminatory as they are based on chronological age. Some justifications offered for them appear to reflect ageist assumptions or economic or social assumptions that are not evidence-based and may no longer be appropriate as labour markets change. Mandatory retirements can push older persons into poverty.

Ageism in the labour market context often takes the form of younger people and employers considering that older persons are unproductive, or unwilling or unable to learn new skills. However, studies have shown that this is not so and that intergenerational workforces are often beneficial for enterprises that foster them, as many older employees bring experience and different skills to their workplaces.

**Empowerment of Older Persons through Education and Training**

Older persons have articulated a variety of needs relating to life-long learning, education (including technical and vocational training) and capacity building. These include, but are not limited to, the acquisition or updating of skills and knowledge that will ensure their ability to (re)enter or remain in work. Older persons also want access to learning opportunities that will allow them to acquire skills and knowledge that goes beyond a focus on work and that relates to their stage in life, their many other public, private, and family roles and their self-fulfilment. These include the acquisition of (enhanced) digital skills, information about their own health, nutrition, and exercise and how most effectively to access health and other public and community services, how to earn a living, learning (more) about politics and human rights and running organisations, grandparenting skills, creative and recreational skills, and literacy and language skills.

Currently laws and policies relating to adult education at the national level do not generally respond to the full range of the rights and needs of older persons and tend to focus on education directed to enhancing people’s capacity to engage in remunerated work, with many of these programmes not intended or well-designed for older persons (and sometimes such programmes exclude persons over a particular age). Other barriers include limited interest shown by policymakers in the life-long learning needs of older persons; inadequate resources available for many of these programmes; the fragmented distribution of responsibility among separate ministries; failure to take into account the diverse needs of different groups of older persons; gender differences in experiences, needs and accessibility; rural/urban divide; a lack of age-friendly trainers, and little media interest in these issues.
ASEM Member States should:

1. Adopt appropriate legal, administrative, educational, and other measures to address the existence and effects of ageism in their societies, taking into account the intersection of age with other characteristics such as sex, race, gender, disability, and other individual characteristics.

2. Continue to consider the possibility of drafting a new United Nations convention on human rights in older age, consulting closely with national human rights institutions, and organisations of older persons, experts, and other interested parties at the national level.

3. Explore ways of making better use of existing international, regional, and national norms and frameworks to improve the enjoyment by older persons of their human rights.

4. Consider ways to strengthen existing regional or subregional human rights frameworks, institutions, and procedures, including through the adoption or strengthening of legally binding instruments and complaint procedures to ensure the provision of adequate remedies to older persons.

5. Ensure that older persons and their representative organisations are consulted about and participate in policymaking of all kinds, in particular that relating to ageing or the rights of older persons and ensure that these are informed by evidence-based knowledge; this should include the economic and social recovery strategies for exiting from or living with COVID-19, and more generally the preparation for and execution of disaster response and recovery strategies.

6. Take steps to ensure that the rights to autonomy and independence are understood as necessary requirements for the implementation of other rights and guaranteed by law.

7. Review their existing legislation to ensure there is explicit constitutional and/or legislative protection against discrimination on the basis of age (including in conjunction with discrimination on the grounds of sex, race, gender identity, sexual orientation, disability, parental and marital status, immigration and employment status or other individual characteristics), including discrimination by both public and private actors (including businesses).

8. Review their policies on mandatory retirement ages to consider whether these policies are discriminatory and whether the rationales put forward to justify them are consistent with the right to equality and non-discrimination on the basis of older age.

9. Encourage research into and promotion of the benefits of intergenerational workforces.

10. Ensure that legislation in all areas is consistent with fundamental standards of human rights and their treaty obligations as those apply to older persons; this includes labour and employment legislation, criminal and other laws relating to elder abuse, social security, social insurance and pension laws, laws relating to the exercise of legal capacity (e.g., guardianship laws), health legislation, housing laws legislation regulating long-term care and other laws.

11. Review the mandates of their national human rights institutions or other similar bodies to
ensure that those mandates cover the rights of older persons and provide protections against discrimination on the ground of age and ensure that the work of those institutions in those areas is adequately funded.

12. Review their national systems for the provision of care and support to older persons, both those living in their own homes and those living in care homes, including assessing whether these arrangements are consistent with existing human rights treaty obligations.

13. Take all necessary measures to ensure that their systems of social protection (including unemployment benefits, sickness benefits, social security benefits and pension benefits) are extended to all older persons, including those working in the informal economy sector and those performing unpaid care work, so that they have access to the resources needed for them to enjoy the right to an adequate standard of living and decent conditions of life.

14. Take all necessary measures to ensure that women’s patterns of participation in the paid labour force, their representation in the informal economy and their performance of unpaid care work in the community and the family, do not lead to their continued exclusion from or disadvantage in access to forms of social security including pensions.

15. Ensure that measures to give effect to the right to lifelong learning, education and capacity building by older persons are designed in close consultation with older persons and are consistent with the human rights to equality and non-discrimination, with programmes available, acceptable, adapted, and accessible to older persons and taking account of the diverse needs of older persons.

16. Review existing adult education policy and programmes, including technical and vocational training and other lifelong learning initiatives, to ensure that these are not focused only on preparation for the paid labour force but also respond to other needs of older persons; and also to ensure that lifelong learning initiatives include access to opportunities for older persons to improve their digital literacy and to learn other skills relating to their life transition as well as for the continuing enrichment of their lives.

17. Work collaboratively with international and national bodies to improve the quality and coverage of statistics and data relating to older persons to ensure that high-quality disaggregated data is available for all aspects of policymaking in relation to older persons.

While these recommendations are directed to ASEM Member States, the Seminar discussions also underlined that there are important roles to be played by others, including national human rights institutions, civil society organisations, business and the private sector, and research institutions and universities in ensuring the realisation of the human rights.
Working Group 1

Autonomy and Independence of Older Persons
Introduction

It was agreed at the outset of the working group session that the discussion would focus on the challenges and main barriers to the enjoyment of the right to autonomy and independence by older persons. Included in this topic was the issue of how ageism and age discrimination affect autonomy and independence.

From this discussion, recommendations were to be considered, including in relation to legal capacity and decision-making. Due to the absence of a comprehensive legal framework in this area, it was further agreed that it was important to discuss how to strengthen the existing legal protection with a new international instrument.

Autonomy and Independence as Free-standing Rights

The importance of deciding on a common terminology was discussed at the beginning of the Seminar. Here the term autonomy was agreed to be used as defining the ability to exercise freedom of choice and control over decisions affecting one’s life, including the right to have control over one’s life and to make one’s own decisions and to have those decisions respected. Using the term independence, it was decided that a central component is the right to live in a community without assistance or, at least, where the amount of help does not subject older persons to the decisions of others. It was also noted that there exist no explicit standards in international law.

The group members agreed that autonomy and independence have fundamental importance for older persons. They are rights that are necessary for the ability of a person to perform functions related to daily living, to be able to carry out one’s decisions in practice and to be able to remain fully integrated in society.

The group emphasised that both autonomy and independence are free-standing rights. They are also cross-cutting rights which clearly influence and enable the enjoyment of other rights. Therefore, it is of utmost importance that older persons enjoy a universal right to the protection of their autonomy and independence. These rights were noted to be the bedrock upon which all the other rights should be based. The group discussed different ways for the realisation of these rights, and they agreed that it may take different forms in varying national and local social and cultural contexts. It was emphasised that these different forms should always be directed to giving effect to the will, preferences, and decisions of older persons.

Access by Older Persons to Society in General

The working group discussed the close and central connection between autonomy and independence on the one hand and access for older persons to society in general on the other. Without autonomy and independence there is a very limited possibility to exercise freedom of choice and control over decisions affecting one’s life. It was emphasised how these are both central components of ways to exercise control over one’s life, to make one’s own decisions, and to have those decisions respected. Independence encompasses the right to live in the community without assistance or with any care and support required to allow a person to exercise their rights.

The group underlined the importance in all matters concerning older persons of focusing and
in practice realising the ability of the older person to perform functions related to daily living, to be able to carry out one’s decisions in practice and to be able to remain fully integrated in society.

It was agreed that older persons generally value autonomy and independence highly. However, they are often not able to make their own decisions about their everyday life and choices in financial and other matters. This is frequently the result of ageism and discrimination, traditions and customs and negative attitudes in society and family.

It was also emphasised that some older persons may not wish to make decisions and that this way of expressing their will and preferences will also have to be respected. This can sometimes be a cultural issue that needs to be taken into consideration. We also need to question whether autonomy is defined differently across cultures.

The group noted that there is a risk of increased social isolation for older persons due to changes in society, including rapid digitalisation and increasing generation gaps (geographically as well as socially). Many older persons face barriers to full participation in the community and in making contributions to society.

To face these challenges together with the whole community, it is crucial that older persons and their representative organisations have the right to be consulted about and to participate in policymaking of all kinds, in particular but not limited to issues that relate to ageing or the rights of older persons. The group noted that often policies are adopted without such consultation or participation and without specific regard to the potential impact on older persons. This is problematic and may have devastating consequences for the development of a human rights-based society.

It was agreed that older persons generally value autonomy and independence highly. However, they are often not able to make their own decisions about their everyday life and choices in financial and other matters. This is frequently the result of ageism and discrimination, traditions and customs and negative attitudes in society and family.
Challenges of the COVID-19 Pandemic

The group agreed that the COVID-19 pandemic has created severe situations of social isolation, including physical distancing, and that we need to look at older persons’ need to be connected to other people and to participate in the community decision making and make contributions to society also during difficult times like this. The handling of the COVID-19 pandemic was a prime example of failing to protect the rights of older persons.

Measures Safeguarding Supported Decision-making

The group discussed to what extent the right to autonomy includes the right not to exercise it oneself in all situations. It was concluded that the right to give away decision making power to another person is only valid where the same person also has the right to revoke that delegation. One should always be able to choose to take back ownership over one’s own decision-making.

It was further noted that legal planning may be a way to prepare for diminishing legal capacity, such as advanced care directive planning. Some in the group noted that a problem is that the types of legal tools are not promoted at the international level.

Recommendations

The group agreed on the following general recommendations:

- Autonomy and independence are fundamental and cross-cutting rights.
- All countries and other stakeholders should make more use of existing mechanisms, like human rights treaty bodies and complaints procedures, to promote older persons’ autonomy and independence. There are very few examples of older persons reporting violations and age discrimination. There is a limitation in terms of difference in scope and coverage. Mainstreaming of older persons is very important.
- All countries should adopt appropriate legal, administrative, educational, and other measures to address the existence and effects of ageism in their societies, taking into account the intersection of age with other characteristics such as sex, race, gender, disability, and other individual characteristics.
- ASEM Member States should continue to consider the possibility of drafting a new United Nations convention on human rights in older age, consulting closely with national human rights institutions, and organisations of older persons, experts, and other interested parties at the national level.
- ASEM Member States and other stakeholders should take steps to ensure that the rights to autonomy and independence are understood as necessary requirements for the implementation of other rights and guaranteed by law.
Social Protection and Human Rights of Older Persons
Introduction

This working group addressed a number of the cross-cutting questions put before the Seminar as well as issues related to social protection and the human rights of older persons. The discussions covered these topics:

- Ageism, COVID-19, and broader considerations
- Defining ‘older persons’ or ‘older age’
- Pros and cons of a new international convention
- Current and potential effectiveness of existing regional instruments in Europe and Asia
- Access by older persons to justice including remedies
- Right to participate and be consulted
- Narratives of ageing – economic burden/decline and fall
- Social protection and social pensions – different approaches
- Gender and social protection – the position of women.

Ageism, COVID-19, and the Broader Context

Participants in the working group noted that the COVID-19 pandemic had highlighted and exacerbated existing patterns of ageism and discrimination around the world. It had also raised fundamental questions about the adequacy of existing rights regimes and institutions to ensure that everyone is entitled to the full enjoyment of their human rights and fundamental freedoms without discrimination on the basis of older age.

Participants pointed to frequent ageist comments (often hostile ones) or assumptions in the media and on social media, some of which were not dissimilar to the types of hate speech directed against other marginalised groups. They were also critical of the crude use of chronological age-based criteria to restrict movement and to be a factor, in some cases the principal factor, in determining whether a person would have access to critical medical care. More generally, many policies and practices had been adopted without proper consultation with older persons and without specific regard to the potential deleterious effects on them. The pandemic and response to it should provide the opportunity for critical reflection on the extent of respect for the human rights of older persons and an impetus to improve those levels of protection to ensure the full realisation of human rights by all, including older persons.

Defining ‘older persons’ or ‘older age’

The participants discussed the contingent nature of the concepts ‘older persons’ and ‘older age’, noting that even where chronological age was used to define the threshold of ‘older age’ for some purpose, the age varied from country to country (even for the same purpose) and also within countries (for different purposes). The socially constructed nature of ‘older age’ was illustrated by proposals in one country to increase the pension age from 65 to 70 in order to reflect increasing longevity and to reduce budget expenditures. Even if one was going to use chronological age, one chronological age for all purposes was too inflexible.

Participants considered, however, that chronological age in and of itself was not a satisfactory approach to defining ‘older persons’. This was because the make-up of the population and the characteristics of individuals in particular age cohorts were heterogeneous as people entered the latter stages of their lives that diversity became even more pronounced. Earlier life experiences and factors such as one’s race, ethnicity, sex, gender, disability, socio-
economic status, urban/rural status, and other characteristics all had an influence on the nature and pace of the ageing process. Not everyone aged 60, 65, 70, and so on is the same – there is significant variation.

Some participants noted that the use of chronological age can be convenient administratively for governments when designing programmes which are intended to make available benefits to older persons, such as eligibility for retirement or for pension or health benefits. While this is indeed administratively convenient, chronological age as a proxy for need or other relevant characteristics can be both over- and under-inclusive. Indeed, in the discussion on social protection in older age, some participants suggested that rather than carving up benefits according to specific age cohorts, it might be better to look at the social security system as a whole over all age cohorts and make available social support to those who needed it at any stage.

Participants also noted that it is not just governments that draw distinctions on the basis of older age, whether defined chronologically or not. Businesses and other private actors also ascribe ‘older age’ to a person and discriminate against them on that basis.

**Pros and Cons of a New United Nations Convention on the Rights of Older Persons**

The question of whether a new United Nations treaty on the human rights of older person or on human rights in older age should be adopted gave rise to differing opinions. Some participants were supportive of a new treaty in view of the limited explicit reference to age and older persons in United Nations human rights treaties and the relative invisibility of older persons and ageing issues in their practice. They considered that a new thematic convention could provide:

- A useful framework for policy development by government and others
- A rallying point for solidarity and advocacy around issues relating to older persons/older age
- A process which could lead to increased capacity and legal/rights literacy among older age advocacy groups (something identified by the group as lacking in many communities)
- A focused process of regular external, international reviews by an independent expert treaty committee that would scrutinise reports from States which were parties to the convention and provide feedback to the State.

A number of participants referred to the case of the United Nations Convention on the Rights of Persons with Disabilities 2006, which had had all of these impacts and which had led to significant legal and policy reform in many countries.

Other participants were not supportive of a new convention, pointing out that:

- The problem is not a lack of binding standards but rather a lack of effective implementation of existing instruments and human rights standards
- Significant progress could be achieved by making better use of existing international and national level procedures
- A new convention would be burdensome and repetitive for States. Resources were not readily available for yet another treaty and could be better applied to substantive policy improvement rather than to responding to yet another international monitoring regime covering similar issues to those covered under existing treaties.
There was consensus in the working group that there were ways in which better use could be made of existing norms and procedures. Participants were in favour of encouraging States and civil society to explore ways of making better use of existing international, regional, and national norms and frameworks to improve the enjoyment by older persons of their human rights.

Current and Potential Effectiveness of Existing Regional Instruments in Europe and Asia

Participants noted that there were no binding international or regional norms relating explicitly to the elimination of ageism or dedicated instruments on the rights of older persons generally in Europe or Asia. At the regional level in Europe and Asia there are different levels of protection. In Europe, the human rights systems of the Council of Europe and the European Union have provided some international and supranational protections against discrimination on the ground of older age and guarantees of the right to social protection. However, these have limited scope and have had a limited practical impact. Within the Asian region, there is even less explicit recognition in regional or subregional human rights instruments of the need to provide protection against human rights in older age; and there is no binding regional or subregional human rights treaty of general application or relating explicitly to older persons that addresses the issue effectively.

Access by Older Persons to Justice including Remedies

Participants expressed concern about:

- Older persons’ lack of awareness of their rights (if indeed such rights existed) – there was a need for legal/rights literacy and support
- The limited extent to which older persons were effectively organised around issues of human rights in older age in some countries and the lack of resources to support such efforts
- Lack of existing procedures with a clear and well-known mandate to address violations of older persons’ rights and the lack of expertise in the legal system
- Limitations of individual complaint-based systems where the problems were structural or broader policy issues
- Absence of collective action possibilities
- Unsatisfactory, slow-moving, or excessively demanding procedures and inadequate remedies.

Participants identified a number of areas where action might be taken:

- National human rights institutions and other remedial bodies could play a heightened education, promotion, and remedial role as well as help to address systemic and structural discrimination
- Older persons’ advocacy groups should explore the possibility of collaborating with other human rights or advocacy groups to bring broad-based challenges
- Much needed to be done in relation to legal/rights literacy and capacity building, something that would be enhanced by a new convention.
Right to Participate and Be Consulted

Participants thought that in some (possibly many) countries there were inadequate processes for ensuring that older persons or their representative organisations were genuinely consulted in relation to law and policy development. Participants gave examples of a variety of different structures that had been set up. They noted the need for the development of strong networks of civil society organisations.

Narratives of Ageing: Economic Burden/Decline and Fall

The discussion in the group then shifted to the central topic of social protection. The topic was first located within the discourses around population ageing and its implications for the full realisation of the right to social security and other social rights for persons in older age. Participants expressed their concern about the narratives of doom and gloom that accompany many discussions of population ageing almost as a matter of course. They noted that many of these reflect ageist ideas and concepts, sometimes fail to reflect changing patterns of social organisation and work after traditional retirement age and fail to take into account the positive social and economic contributions made by the older population.

They also often promote or give rise to scenarios of intergenerational competition and unfairness without taking into account how the generations support each other reciprocally in different ways. A number of participants stated it would be very helpful to have good case studies of how the efforts to confect intergenerational conflict and competition – more newsworthy than intergenerational collaboration and complementarity – could be countered, especially in times when societies were going through or recovering from a major economic downturn such as the COVID-19 pandemic.

Social Protection and Social Pensions – Different Approaches

Participants noted that shifts in family structures resulting from a range of factors had meant that ‘traditional’ approaches to caring for older persons were becoming less feasible in many countries – the romantic past was gone in many countries and planning for the future had to accept that fact.

Significant differences were identified between social protection in older age in Europe and in much of Asia (especially LMIC countries) – in particular a much smaller percentage of populations in Asia have access to employment-related/contributory pensions or to some other form of universal pension.
Significant differences were identified between social protection in older age in Europe and in much of Asia (especially LMIC countries) – in particular a much smaller percentage of populations in Asia have access to employment-related/contributory pensions or to some other form of universal pension.

Some participants drew attention to the importance of a universal/supplementary social pension in their countries, which had often started at a very modest level and then increased over time; it also needed to be viewed in the context of other forms of financial or services support that were available such as access to free health care or to free or subsidised housing.

Some participants argued that the question of universal social pensions needed to be seen as part of an overall economic and social support system that took into account different sources of support but also the capacity of the system with a smaller number of workers to sustain a social pension. Some participants noted that a universal social pension could involve a relatively modest level of expenditure.

A number of participants noted that in some cases problems with the collection of taxes (especially the size of the black or cash economy) prejudiced the State’s ability to provide for such a pension and for other social expenditure.

It was noted that often only the economic cost of such a social measure was counted, but there was no assessment of the economic benefits (e.g., in the health budget) that might result from lifting people out of poverty.

Gender and Social Protection: The Position of Women

The gendered nature of access to social protection involving less advantageous access by and lesser levels of support for women was acknowledged. The impact in older age of women’s interrupted paid labour market participation, part-time work, and the time spent on unpaid care work, was particularly severe in the context of contributory, employment-related schemes. The high percentage of women in Asia who work in the informal economy also means that they do not fall under the umbrella of employment-linked pension arrangements and so are dependent on their own or family resources or any universal social pension or other benefits that are available.

The gender differences were often not addressed adequately in the design and administration of contributory schemes. Though some innovative approaches have been adopted, reliance on a fallback universal pension as a supplement may not be enough.

There was also a need to take into account intersectional aspects of women’s lives – for example, the situation of women with disabilities who generally have even less opportunity to take part in paid employment than some other groups of women.
Working Group 3

Age Discrimination Towards Older Persons Focusing on Labour Markets
In order to organise more detailed discussion of this topic, the working group decided at the outset to consider the three following issues:

- Improvement of labour market participation/change in the perception of older persons
- Disadvantaged and precarious workers in the labour market/including the situation of health crisis (COVID-19)
- Situation of older women and missed opportunities over lifetime, rejoining workforce as a choice.

All these topics are interlinked and after a round of introductions and identification of priority issues, members of the working group in their contributions mainly focused on the following themes:

- Education (lifelong learning, over the whole life) as an important tool to be updated with adequate skills for the labour market
- Ageism/Perception of older workers which is of a key importance in various labour market situations (e.g., in hiring)
- Inequalities (including poverty) as a challenge to solve in developing countries in particular
- Retirement age which could be considered as mandatory or optional
- Intergenerational ‘clash’ (younger-older perceptions and attitudes).

In the discussion of ageism in the labour market, there was no consensus concerning the age at which someone could be defined as an older/old worker. This is usually linked to the official retirement age of a given country and it differs between countries. However, the existence of an official retirement age guarantees a certain right to leave the labour market.

The issue of mandatory retirement age was discussed in the context of ageism in the labour market. Some experts saw it as an obstacle to participation in the labour market or as a barrier to return to work, or to starting work at an older age (old people must have freedom to work as long as they are willing and able to do so). However, others saw it as a relief from very demanding, and often physical, work. In developing countries, for some people – such as women, informal workers, or precarious workers – the mandatory retirement age limit may operate as a safety social mechanism.

The lack of adequate education of older workers creates a barrier to becoming employed or having a chance to obtain a better paid job. Younger workers can perceive older workers as not productive and not needed for the labour market (this is a misconception). Older people can also lack adequate knowledge and skills to apply for better paid jobs.
However, challenges of the labour markets depend on the economic situations of specific countries, and context is important to how the policies/measures are perceived and accepted. Mandatory retirement age is an example, as the UK, Australia, USA, Canada, and New Zealand have already banned this concept yet in these countries the actual productivity measured by GDP by hours is much higher in comparison with Korea.

The problem is that unequal treatment of older persons in the labour market (ageism) can occur, while work is needed for economic stability (to have enough income). There are inequalities in the labour market (jobs differ between sectors: formal/informal), and this can lead to poverty as even employment is sometimes not sufficient to prevent poverty. The lack of adequate education of older workers creates a barrier to becoming employed or having a chance to obtain a better paid job. Younger workers can perceive older workers as not productive and not needed for the labour market (this is a misconception). Older people can also lack adequate knowledge and skills to apply for better paid jobs.

**Recommendations**

**Education**

- To develop measures which will ensure that older people (especially women) possess adequate and up-to-date skills and knowledge which could be attractive in the labour market. This should include workers older than 60 if they wish to work longer. However, the training needs should be met/satisfied earlier, not at a certain old age. A lifelong learning approach needs to be further promoted and implemented.

**Ageism/Perception of Older Workers**

- To fight ageist practices as well as ageist attitudes and opinions, which will have an effect on human resource decisions (including hiring), to ensure that everyone, regardless of their age, has fair and equal opportunities in the labour market, and that only competences and skills matter.
- To combat ageism, there is a need to design and implement policies in the labour market which will be based on scientific research.

**Inequalities**

- To implement mechanisms which will also suit employed older people to prevent them from being at risk of poverty (work could be a measure to prevent poverty; however, not all jobs are available and people often work below standards).
- To secure funds for assistance of those who are not protected (social protection and health care) especially in developing countries. In the times of COVID-19, there is an intensified need to secure such persons. However, joint efforts of various actors - policy makers, the community, NGOs – are needed to secure the right of such persons to live in dignity. An example is to evaluate if and how governments can include in the yearly budget allocation for costs relating to older people and support for the ageing workforce.
- Access to information on job opportunities should be the same and equal for all, including persons who are disadvantaged and poor. There is also an urgent need to teach older people how to use the Internet.
The Right Time for Retirement

• To evaluate the role of a mandatory retirement age in labour market policy and adjust it to the specific country’s situation.
• To allow for flexibility of deciding about retirement, taking into account the economic situation in which this decision should be taken, especially as the situation of formal and informal workers, and by sectors, differs.
• More discussions about the acceptance under certain conditions of a retirement age (mandatory/voluntary, flexible or not).
• Elimination of age limitation (in hiring process) will provide opportunities to work (fair and equal opportunities for all). However, in the case of retirement, a mandatory age could be considered as the right to leave the labour market when it is needed.

Intergenerational collaboration

• To educate and therefore change the perception of younger generations that older persons in the labour market are not competition but could be partners in intergenerational collaboration. Ageism does not only refer to older persons but also to younger persons; therefore, changing the perception of the ‘proper’ age in the context of the labour market in particular is a must.

• To protect the right of older persons, it is necessary to start with the younger generation to convince them that they need to start saving money at a young age so that they will be able to protect themselves after retirement (regardless of whether they will be able/wish to work later). There is a need for tailored campaigns and education for these groups as ageing is a life cycle. People must be convinced that this is a responsibility for everyone. Companies and civil society should be involved in this process.
• Overall, while the discussion is linked to the demographic changes and the economic situation of the country, labour markets are also changing dynamically because of technology and new approaches to work. A wider perspective is needed for future actions to secure all rights of the older workers of today and of the future.
Empowerment of Older Persons through Education and Training
Background

The group discussed three areas: Implementation gaps in national/regional/international legislation; policies and programmes in relation to the right to education and training; opportunities, lessons learned and good practice examples of promoting and protecting the right; and priorities and recommendations for concrete actions.

The group considered the report of the research carried out by HelpAge International in 2019 on ‘What older people say they want to learn.’ According to this report, older persons were interested in learning about the following:

• How to use new technology
• Health, nutrition, and exercise
• How to access health services
• Earning a living
• Participating in community life
• Politics and human rights
• Running organisations
• Raising grandchildren or other children in their care
• Enjoying themselves – creative and recreational skills
• Communicating – languages.

In order to ensure the right to education, training, and lifelong learning of older adults, the following factors need to be incorporated in designing education and learning policies and programmes:

• Non-discrimination and equality
• Availability
• Acceptability and adaptability
• Accessibility
• Participation
• Remedies and redress.

The following issues and questions were discussed:

• Gender issues: How can older women’s access to education and training be improved?
• Independent living: What are some potential strategies to help older persons become more independent? (Classes on nutrition, fitness, basic health care, finances, housework, and other life skills)
• Local community-based interventions: do they successfully utilise poverty reduction and social inclusion strategies? What are the factors determining success? Do these interventions empower older persons through educational opportunities? How to strengthen such programmes?

Issues, Gaps and Limitations

There are issues, gaps, and limitations in ensuring the right to education and training at the macro, meso, and micro levels.

Macro level

• Lack of legal and policy measures related to adult education and learning lead to a lack of concrete actions.
• Lack of public resources is one of the biggest barriers.
• The education and training agenda for older people is invisible at the policy level.
• Policy makers have limited interest in empowering older people through education and training.

Meso level

• Different ministries are involved in implementing education and training services, and segmented delivery systems lead to issues of limited accessibility.
• There is a lack of age-friendly trainers who are sensitive to the needs of older adults.
and tailor their practice so that it is more acceptable to the learners.  
• In most countries, there is a gap between rural and urban areas.  
• Mass media show little interest in older citizens and their interests and needs.

**Micro level**

• There are different needs for learning among older people. Therefore, the diversity and multiple roles of seniors need to be considered.  
• Using new technology is one of the biggest challenges, especially with the advent of the pandemic and closure of education and training facilities. The huge digital divide needs to be tackled.  
• Some older people may suffer from a lack of confidence in learning.  
• The gender gap and differences in using education and training services.  
• There is often a gap between programmes and the immediate and practical needs of older people.

**Situations Vary with Different Countries**

There are similarities and differences among the ASEM partners, including:

• Korea: Evening schools for poorly educated older adults suffer from limited public support for basic education. Older people are excluded from opportunities to get an education. Widening of the gap between well-educated and poorly educated people is expanding.  
• Romania: The budget for education is very small. There is a big gap between urban and rural regions in educational resources.  
• Poland: There is a lack of policy tools for the education of older people, and older people are excluded from technological changes.  
• Laos: There is a lack of a legal framework for the education of older people and, therefore, a specific budget line for the elderly has yet to be made available. The digital divide is a challenge for older people.  
• India: Different ministries are involved, and life skills training, digital literacy face implementation gaps.  
• Singapore: Diverse policies and programmes including the National Silver Academy programmes provide innovative approaches. But sometimes, a mismatch occurs between policies and the needs of older people because older people have more practical needs such as job training. Moreover, older people lack self-confidence in learning new things.

More attention from policy makers is needed on the issue and on the needs of older persons to be educated and trained in order to ensure active and healthy ageing.
Priorities and Recommendations

- Advocate for more public and private resources to be allocated to support adult education based upon legal measures.
- More attention from policy makers is needed on the issue and on the needs of older persons to be educated and trained in order to ensure active and healthy ageing.
- Analyse data and assess lifelong education and relevant policies from an age impact perspective in order to increase the access by older persons to education and training opportunities.
- Conduct gender impact assessment of education and training services to assure equal accessibility and utilisation of benefits.
- Raise awareness of the government and the state about the importance of the right to education and training of the older population.
- A paradigm shift is needed from ‘right to education’ to ‘right to learn’.
- Strengthen digital literacy of older people who are isolated from technological developments.
- Motivate and increase the self-confidence of older people to learn life transition skills, digital skills and other knowledge that will empower and permit them to get involved in active aging.
- Provide activities that further enhance older peoples’ skills, their awareness of legal rights, etc.

- Develop age-friendly capacity-building programmes to train age-sensitive educators and practitioners.
- Initiatives such as ‘global digital forum for seniors’ need to be created to bridge the gap of allocation of resources. Quality and innovative programmes need to be developed with more effective content, as well as education materials on digital literacy.
- Peer-learning models and different venues including senior associations need to be involved in providing services to older persons. More NGO involvement is needed as well.
- Life cycle approach, intergenerational approaches, and innovative ways to remove personal barriers in accessing education and training opportunities are needed.

Follow-up project ideas

- Global forum for digital literacy of older people.
- Comparative analysis of legal measures and delivery systems for education and training of older people among ASEM partners, and draw implications for common initiatives to enhance the right to education and training.
- Share good practices of innovative programmes.
- Develop training programmes for age-sensitive project development and implementation.
Conclusion

The Seminar underlined the increasingly urgent need to address many issues relating to ageing and the rights of older persons in Europe and Asia. While the circumstances in countries vary both between and within the regions, as well as within countries for different population groups, there are many commonalities. In both regions, modernisation, urbanisation, and demographic ageing have meant that assumptions about the progress of people’s lives that may have been made in the past may not be applicable today and in the future.

We need to rethink our approach to how people can and do spend the later parts of their lives and how older persons and older age are viewed by us (including those of us who are older) and recognise that older persons can be and are contributors to our societies in many ways. As has happened in relation to persons with disabilities, there is a paradigm shift underway from seeing older age as inevitably a period of significant decline when people become a burden to society and merely takers rather than givers, to a rights-based model that sees older persons in all their diversity as rights holders who contribute to our communities but who also have the right to fully participate in society, to exercise their autonomy and independence and the right to care and support from the State if they need that so that they can live a decent and dignified life. The shift has started but has a very long way to go.

A major theme of the Seminar was the existence and impact of ageism and ageist practices. Participants noted that ageism was found in all societies and that it had a deleterious effect on the health and well-being of older persons, involved violations of the right to equality and led to barriers to enjoyment of many rights including the right to work and earn a living. There was a consensus that much more is needed to be done to address ageism and that there was a real need to promote intergenerational collaboration and interaction, something that would benefit all age groups in society and society as a whole.

While general human rights guarantees can be applied to the situations that older persons face, they do not appear to respond to the full panoply of rights violations, as they do not adopt a comprehensive and coherent approach to the issues.
One theme that was pointed out by some participants was what they consider the inadequate coverage of issues relating to human rights in older age in existing international human rights instruments. While general human rights guarantees can be applied to the situations that older persons face, they do not appear to respond to the full panoply of rights violations, as they do not adopt a comprehensive and coherent approach to the issues.

Some suggest that further consideration needs to be given to adopting a new international convention on the subject, as well as strengthening or adopting regional and sub-regional guarantees that explicitly address older persons or older age. Others insist on the full implementation by Member States of the existing international human rights standards. There are steps that can be taken by all stakeholders to give the human rights of older persons or in older age a more prominent place on the agendas of existing bodies and procedures. Participants also emphasised that there was a need to review existing law at the national level to ensure that they did not embody or reinforce ageist assumptions and provide prompt and effective remedies for age discrimination.

The Seminar took place at an important juncture, when the issue of the human rights of older persons had been given considerable prominence on international and national agendas because of the COVID-19 pandemic. The discussions revealed the nature and extent of many shortfalls in ensuring equality in the enjoyment of rights by older persons and indicated a range of potential measures to address these. The challenge now is for governments collectively and individually, along with other public and private stakeholders including national human rights institutions, international bodies, and the private sector, to strengthen their efforts to respond to the calls for change, and to work towards bringing about this change in close collaboration with, and guided by, older persons and their representative organisations.
Background Paper on Human Rights of Older Persons

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Summary

This background paper provides an overview of the fundamental concepts and some of the important current issues relating to the human rights of older persons at the international, regional, and national levels. The COVID-19 pandemic has brought into high relief social attitudes and institutional practices that existed before the pandemic that embody ageist assumptions and result in the denial of equality in the enjoyment of human rights by older persons.

The paper first reviews the demographic background to the discussion and the accompanying narratives of population ageing which primarily see these developments as posing significant economic and social drawbacks and challenges, but which oversimplify and underestimate the existing often unacknowledged contributions of older age cohorts to their communities and the potential opportunities that population ageing offers.

The paper then outlines the human rights-based approach it adopts: This stresses that a fundamental part of the policy responses to demographic ageing should be based in the existing human rights framework and that older persons must be seen as the holders of rights and active agents in the conduct of their lives, not the recipients of charity or welfare or having decisions made for them.

The paper then notes how ageism is a widespread, deeply embedded, and accepted form of discrimination in our societies. It is both a reflection of and contributor to inequality and discrimination against older persons on the basis of their older age. The paper also explores the challenges of defining who is an ‘older person’ or when ‘older age’ begins, noting that the significance of age is largely socially constructed, that persons in the later stages of life are enormously diverse and experience ageing differently, and that different criteria for determining ‘older age’ or ‘older persons’ need to be applied in different contexts and need to have regard to this diversity and the fact that particular groups of older persons may face intersectional discrimination.

The paper then provides a description of the existing human rights framework relevant to older persons, in particular the binding treaties and non-binding instruments that exist at the international level and in the European and Asian regions. It shows that while there is some protection in the form of general human rights treaties at the universal level and in the case of Europe at the regional level, there are significant gaps – in particular, there are no dedicated binding treaties at the international level or in Europe or Asia that comprehensively and coherently protect the rights of older persons or the rights of persons to enjoy all human rights without discrimination on the basis of older age.

The paper then proceeds to a review of issues and developments in four important areas of concern, while stressing that these are illustrative and that the human rights of older persons are interrelated and interdependent. These thematic areas are: the autonomy and independence of older persons; social protection and the human rights of older persons; age discrimination against older persons focusing on labour markets; and empowerment of older persons through education, training, lifelong learning, and capacity building. The paper draws attention to the impact of the COVID-19 pandemic and
responses to it in relation to a number of these areas. The paper also notes the continuing challenges with obtaining comprehensive disaggregated data relating to older persons in many contexts.

Finally, the paper makes a number of recommendations to ASEM Partners and other stakeholders as to the steps that they may wish to consider in their efforts to improve the enjoyment by all older persons of their human rights without discrimination on the basis of older age. These are collated at the end of the paper as well as appearing in the course of the discussion.
I. Introduction

a. Structure of this Background Paper

This background paper is intended to provide a human rights-based description and analysis of a number of important themes relating to the human rights of older persons, and to stimulate reflection on and discussion of positive measures that might advance the better enjoyment by older persons of their human rights in these areas and more generally.

In this Introduction we revisit briefly the demographic background to discussions about the implications of ageing in the modern world, outline the more common narratives that frame these discussions for policymakers, and describe what we mean by a human rights-based approach and the paradigm shift that is underway in many circles about how issues of ageing and the rights of older persons should be approached.

In Part II of the paper, we outline some core concepts that are central to discussions about ageing and the human rights of older persons – the nature of ageing, its social construction and the phenomenon of ageism, definitions of ‘older persons’ and ‘older age’, terminology used to describe older persons, and the diversity of older persons and the concept of intersectionality or multiple or cumulative discrimination and its importance when approaching this topic. Finally, we describe the relevance and impact of the COVID-19 pandemic on older persons and its implications for our approach to the human rights of older persons.

In Part III we provide an overview of the international framework for the protection of the human rights of older persons that applies to ASEM members from all regions. We also describe the systems of human rights protections that exist at the regional level within Europe, in particular within the Council of Europe with its 47 members and the European Union with its 27 members. There are no direct equivalents within the Asian region; however, the paper outlines relevant developments at the subregional level within ASEAN and SAARC. The paper also notes regional developments of specific importance to the rights of older person in the African and Americas regions, each of which has adopted a binding treaty on the human rights of older persons that forms part of a regional system of monitoring and enforcement of human rights.

In Part IV of this background paper, we take up four thematic areas of importance. These are among the themes recently considered by the United Nations Open-Ended Working Group on Ageing and that are of central importance for many older persons, for legislators and policymakers, and, indeed, for all of us whatever our age or role.

In Part V of the paper, we consider the way forward, describing a number of current initiatives to improve the rights of older persons – in particular, developments relating to the possible elaboration of a new convention on the human rights of older persons – and identify and make recommendations about possible actions at international, regional, and national levels.

b. The Demographic Background

Population ageing is a phenomenon found in almost every country in the world. The changing demographics of the world’s population has meant significant increases in the number and proportion of older persons in most countries and even larger numbers and proportions are likely to occur in many countries in the next few decades. In its 2020 report on the subject, the Population Division of the United Nations Department of Economic and Social Affairs...
noted that the 703 million people over 65 in the world in 2019 were expected to increase to 1.5 billion by 2050; the largest numbers would be living in Eastern and South-eastern Asia, Northern Africa and Western Asia.4

While populations have been or will be ageing in all regions, the faster rate of growth has been in Eastern and South-eastern Asia, and Latin America and the Caribbean.5 Eastern and South-Eastern Asia is expected to see the largest increase in the number of persons aged 65 or over by 2050 (312 million), with the fastest increases in Northern Asia and Western Asia, followed by sub-Saharan Africa. Increases in Europe and Northern America and Australia and New Zealand are likely to be small; these regions already have populations that are significantly older.6 Furthermore, the numbers of persons aged 80 or over have increased in all regions, with those numbers set to climb. The proportion of the overall population made up by persons aged 65 or over has increased and is predicted to increase across the world.7

Some 37% of the world’s population over 65 lived in Eastern and South-Eastern Asia in 2019 and that figure is expected to remain much the same up to 2050.8 Europe and North America was home to 29% of the older population in 2019 but that percentage is expected to fall to less than 20% by 2050.9

Life expectancy has also been increasing and is set to continue to improve in much of the world, with life expectancy at age 65 an additional 17 years in 2015-2020, increasing to 19 years in 2045-2050, though these figures vary among regions.10 As women tend to live longer than men, including at older ages, they represent the majority of persons over 65 and a larger majority of persons in older cohorts.11 Not only do these rates vary among regions, but they also vary within regions and countries and for individuals depending on factors such as socio-economic status, race, disability, and other factors that affect health at different stages of the life course.

Thus, while countries are at different stages in their population ageing, many common issues have arisen.

c. Narratives of Population Ageing

Frequently, discussions of the implications of ageing are focused on the potential economic impacts of ageing on societies. A frequently expressed concern is that ageing societies are likely to experience severe strain on national budgets if they are expected to provide adequate health services, long-term care and support, social protection, and the other services for their populations. In other words, the ‘grey tsunami’ will give rise to social problems and fiscal difficulties which may be beyond the ability of many societies to cope with. Such analyses lead to consideration of how to develop policies and structures which will be able to respond to the anticipated needs and problems.

These analyses often focus only on economic matters – and even then it is a constrained economic view. Although macroeconomic considerations are obviously fundamental, they are often characterised by an approach that sees only the debit side of the balance sheet. Older citizens are seen only as a drain on resources – no longer economically productive and no longer contributing to state revenue but just the recipients of expensive social benefits and services.12

There are different measures of population ageing,13 some focusing only on chronological age. The more rapid the rate of ageing and the more extreme the disparity between the
‘aged population’ and the overall (‘working’ or productive’) population, the more urgent seems the threat that such a process represents. Yet these measures, especially those that focus primarily on chronological age, are not always the most appropriate measure to assess the ‘burden’ about which policymakers should be concerned.14

These analyses are often supported by references to measures such as dependency ratios – measures of the proportion of the presumptively unproductive, older section of the community and the not yet productive younger section to the productive working age section of the community. There are different types of dependency ratios. When they draw only on chronological age, they provide ‘a poor proxy for the level of dependency in a population, since older persons are quite diverse with respect to economic activities, including in terms of labour force participation.’15

Such measures have been shown to be limited in their own terms. For example, they assume that persons over a particular chronological age threshold are not engaged in remunerated employment, even as an increasing number of older people do so. Secondly, they neglect the participation of older workers, especially women and workers in developing countries, who continue to participate in the informal economy well after they reach a standard ‘retirement’ age. Thirdly, they fail to reflect the importance of intergenerational wealth transfers from old to young, and the fact that paid employment may not be the only source of income.

Equally importantly, these narratives neglect important social and economic functions that older persons perform, ones that are often not reflected in the key national statistics, for example, the calculation of GDP. This includes the volunteer work performed by many older persons in their community, as well as the unpaid care work performed for other family members (both older and younger), the latter overwhelmingly performed by women who have often provided unpaid care work of different sorts throughout their lives. This lack of recognition in relevant statistics and policy calculations of the unremunerated but economically and socially valuable work performed by many older persons has parallels with the similar neglect of such work, especially by women, at earlier stages of life. If one is to make any credible assessment of contributions to society by older persons, these types of activity must be documented and counted.

**d. A Human Rights Approach**

These approaches focus on economics and cost-benefit analyses in money terms. They tend to ignore, marginalise, or discount important economic contributions that many older persons make and give little weight to other important social functions that they perform. They reflect a view of ageing and older persons as a time of decline, of non-productivity and non-contribution; this is a view that needs to be critically examined in light of the reality of older persons’ lives and the fact of their contributions to their communities.

In parallel with this pattern of economically focused discourse on the impact of ageing populations and concerns about the sustainability of health, retirement and social support systems, a **human rights-based approach** has emerged. Efforts to apply international human rights standards and principles to the situation of older persons and even to formulate instruments that explicitly address those rights have a long history. However, it is only in the last thirty years that more concerted activism around this issue has grown at the international level: the last decade has seen an increase in calls for the development of
a comprehensive, integrated, and explicit binding international framework on the human rights of older persons.

A human rights-based approach starts from the rights of older persons to benefit from the rights listed in the major international human rights treaties; these are described in more detail below. Thus, older persons are rights holders who are entitled to expect from their State respect for their human rights and the adoption of legal and policy measures that actively promote the enjoyment of their civil, political, economic, social and cultural rights. This reflects a change in thinking about older persons, from seeing them as feeble, recipients of social benefits, a problem of social development, to viewing older persons as equal citizens entitled to participate fully in society and who enjoy rights rather than being recipients of charity or discretionary government support.

**Paradigm Shift from Charity to Rights**

This paradigm shift, which is underway, but which has by no means been comprehensively adopted at the international or national levels when issues of ageing population are considered, has many similarities with the fundamental shift in thinking that took place in relation to persons with disabilities, one that is reflected in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) that was adopted in 2005. That shift saw a move from thinking about disability as a medical issue with the ‘problem’ of impairment located in the individual that might be ‘fixed’ or otherwise accommodated within existing structures, to a ‘social model’ of disability that saw disability primarily as a result of the interaction between an individual with an impairment and their environment (in other words, disability was in fundamental respects ‘socially constructed’). This shift in thinking involved a change ‘from viewing persons with disabilities as objects of charity and recipients of welfare to recognising them as the holders of rights and full participants in society’. A human rights model based on this social model of disability – reflecting the shift – is now the predominant framework for dealing with the rights of persons with disabilities at the international law, as reflected in the CRPD. Such an approach involves ‘taking active measures against ageism and reconceptualising the way in which societies view older persons, from passive receivers of care and assistance and an impending burden on welfare systems and economies, to active contributors to society’.

There are a number of reasons for applying a human rights-based approach in the context of older persons. In the first place, the principal human rights treaties guarantee many of the rights and values already embodied in many national constitutions. Secondly, where States have accepted relevant international treaties or are bound by customary international law obligations relating to human rights, they are formally bound by international legal obligations to respect, protect, and fulfil those rights. All ASEM States have accepted a range of international obligations, though the exact list varies. Not all States are subject to exactly the same treaty obligations, but all States are subject to the most important obligations, in particularly in the field of economic and social rights.

A third reason is that a human rights approach has at its heart participation by those affected in policy and decision-making both as a value of its own and as a means to an end of reaching better-informed and more transparent and accountable decision-making. A human rights-based approach can both temper and enrich analyses which draw on other frameworks. Finally, adoption of a human rights approach will assist in the realisation of
the goals of both the Madrid International Plan of Action on Ageing and the 2030 Framework for Sustainable Development.

The approach taken in this paper is a human-rights based approach – one that is informed by the principal international standards and that insists that the experiences of older persons, their voices, and their rights, need to be central to policymaking, not just in relation to ageing but also in relation to other matters. There are many examples of national legislation and policy that seek to engage with ageing issues and to support older citizens in the later stages of their lives, and often these have represented significant improvements on what went before. At the same time some of these reflect ideas about ageing and roles of older persons that are based on ageist assumptions (both positive and negative) and which are arguably therefore inconsistent with the human rights of older persons. Of course, even where laws and policies are in harmony with and promote human rights standards, implementation is often a challenge: no matter how good one’s laws and policies are, their adoption may be an easier step than their implementation.

While this background paper does not attempt to undertake an exhaustive assessment of the human rights consistency or laws and policies in ASEM countries or of the problems with implementation, it does seek to identify questions that might be considered as countries develop or revise their laws and policies on ageing or those that otherwise have an impact on older persons. This process is underway in many countries and there are good practices to be shared.

e. Terminology

An important issue in thinking about ageing and social responses to it is the language used to refer to people who have reached the middle or later stages of life and the attitudes that it expresses. While ageing has its ‘objective’ elements – the

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chronological aspect of ageing is the most obvious – the significance of older age depends on how society views the process of ageing and those who have reached older age and how this is reflected in social arrangements.

In many earlier international and regional human rights documents the term ‘elderly’ was and continues to be used to refer to persons who have reached the later stages of life (itself a flexible concept). The term is frequently used in public discussions of older persons, especially those who might be described as having reached the cohort of the ‘oldest older person’ (70+, 75+ or 80+). The term connotes vulnerability, weakness and incapacity, and is now generally viewed as an inappropriate way of referring to a diverse population group, many of whose members do not possess the characteristics often attributed to this group. The use of the term thus perpetuates harmful ageist stereotypes in relation to older persons.

In 1995 the UN General Assembly decided that for the purposes of the United Nations, the term ‘older persons’ would be used instead of ‘the elderly’, in line with the United Nations Principles for Older Persons. In this paper we use the term ‘older persons’ except when quoting from instruments or other sources that use ‘the elderly’ or similar terms.

The meaning of particular terms in a language is contextual and the connotations of a term such as ‘the elderly’ may be viewed differently by speakers of the same language. Language is both a marker and a reinforcer of ageist attitudes. What is important in the context of language when referring to older members of society, including in the naming of official laws, public bodies, and policies, is to examine the language used to see whether it embodies or perpetuates harmful stereotypes, attitudes or practices that do not respect the autonomy, independence, and equality of older persons as fellow citizens and participants in the community and as bearers of rights.
a. Ageing, Ageism, and Human Rights

Ageism\(^{23}\) is a term that is often used to describe certain stereotypes, prejudice and/or discrimination against older persons based of their chronological age or of a perception of older persons being ‘old’ or elderly.\(^{24}\) It can be implicit or explicit. It can be expressed on different levels, such as micro, meso, or macro levels.\(^{25}\) Ageism may be negative or positive (apparently benevolent) and can take many different forms. In times of world public health emergencies due to the COVID-19 pandemic, an example has been the discussion in some countries on whether older persons should or should not have equal rights to care in intensive care units due to scarcity of ventilators or other acute health care resources.

A classic definition of ageism by the person who coined the term,\(^{26}\) Robert Butler, describes the phenomenon as:

“...the systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this with skin colour and gender. Old people are categorized as senile, rigid in thought and manner, old fashioned in morality and skills [...] ageism allows the younger generation to see older people as different from themselves; thus they subtly cease to identify with their elders as human beings.”

Ageist stereotypes or assumptions may be embodied in and reinforced by the enactment or enforcement of a particular law, practice in a public community or other behaviour in society toward an (age-based) group of people. In those cases where the aim of the differential treatment is intended to benefit the group in focus (such as offering lower fares for transportation, discounts on the cost of other public services, or special housing arrangements for persons above a certain age), the age-based approach may be non-discriminatory, either because it involves permissible positive measures adopted in order to fulfil particular needs of the ageing population groups or to redress existing disadvantage and discrimination. Even these measures, though, may be problematic if they are based on stereotypical assumptions and have the effect of marginalising or stigmatising older persons.

Behaviour which is based on ageist assumptions is a form of discrimination against older persons and in conflict with fundamental human rights of dignity and equal worth. The aim should therefore be to combat such ageism in contemporary societies. Despite its prevalence and documented effects on the enjoyment by older persons of their human rights, including the right to health, no international human rights treaty specifically requires States parties to take steps to eliminate ageism; nor has practice under those treaties focused on ageism as a critical element in the elimination of age discrimination. This is in stark contrast to the provisions in a number of UN human rights treaties that expressly require States parties to take steps to eliminate racism, sexism and ableism, and the States under them to give effect to those obligations.

Ageism is pervasively entrenched in today’s societies across the world. It is sometimes suggested that some societies, including collectivist societies in Asia which place significant value on elders and the roles that they play, show a lesser level of ageism. This probably overstates the position and neglects the negative attitudes to some aspects of ageing seen in those societies. Conversely, it may also discount the traditional and continuing valuing of elders in other societies (which also co-exists with ageism). Scholars have debated whether in societies which have traditionally valued elders and their experience, rapid modernisation,
urbanisation, increased longevity, and changes in family structures with fewer children and a move away from multigenerational living arrangements has led to a devaluing of older members of the community and a rise in ageism at the personal, social, and institutional level. Whatever the explanations for ageism, it is present in all our societies, though it may take different forms depending on the specific and cultural context.

Tragically, the coronavirus pandemic has aggravated negative stereotypes and resentment towards older persons when the public discourse is focusing on older persons’ vulnerability as a ruinous coast for the health care services. The UN has observed that hate speech targeting older persons has emerged on social media and that there is a lack of solidarity in these difficult times. States must acknowledge this as an alarming, structural issue which may impede the realisation of human rights development and certainly their general well-being during this crisis. As long as the stigma and negative stereotypes of older persons are not addressed, this group will continue to be marginalised.

Unlike in the cases of racism, sexism and ableism, there is no international human rights treaty that contains explicit obligations requiring States parties to address the existence and effects of ageism. The term ‘ageism’ has been rarely used by UN human rights bodies, with the exception of the Independent Expert on the human rights of older persons and the Special Rapporteur on the Rights of Persons with Disabilities, though there have been references to stereotypes based on age or age in combination with characteristics such as sex. Nor do the European binding standards refer explicitly to ageism or impose an explicit obligation to address it, though the non-binding instruments do.

It would be possible to derive an obligation to address and eliminate ageism under existing treaties by analogy to sexism, ableism, and racism. The concept of discriminatory treatment includes dealing with persons on the basis of group-based stereotypes and ideas of superiority or a particular group. Accordingly, States’ obligations to prevent discrimination on the basis of ‘other status’ or ‘age’ specifically could be interpreted to extend to obligations to eliminate ageism. However, little progress has been made on this front under general human rights treaties; this may be contrasted with the specific provisions of the Convention on the Elimination of All Forms of Discrimination against Women (Article 5(a)) and the Convention on the Rights of Persons with Disabilities (Article 8(1) that address sexism and ableism and the measures taken under those treaties.

Recommendation (a)

ASEM Partners should identify and adopt appropriate legal, administrative, educational, and other measures to address the existence and effects of ageism in their societies, taking into account the intersection of age with other characteristics such as sex, race, gender, disability, and other statuses.
b. Defining ‘Older Persons’ or ‘Older Age’

One of the challenges in seeking to ensure that no one is discriminated against on the basis of their older age is defining ‘older age’ or ‘older persons’, in light of the fact that a person’s chronological age is only one element of a person’s ageing. As the European Union Agency for Fundamental Rights noted in its 2018 report:

Age and ageing are usually discussed and addressed from four distinct but intersecting perspectives:

- Chronological age based on date of birth,
- Biological age, linked to physical changes,
- Psychological age, referring to mental and personality changes during the life cycle,
- Social age, which defines the change of an individual’s roles and relationships as they age.  

Working definitions of ‘older persons’ vary considerably, and demographic statistical categories have tended to be dominant in discussions about ageing, although they do not capture the multidimensionality of ageing. The category of older persons is sometimes defined as those aged 60 or more, sometimes 65 plus. The United Nations generally uses the age of 60 as the threshold for defining ‘older persons’, though recognises that this may be inappropriately high in certain circumstances and especially for some developing countries.  

The age of 60 does not align with other classifications which take the age of 65 as a rough proxy for the termination of participation in the paid labour force and/or eligibility for a state-financed pension, thus underlining both the arbitrariness of a chosen chronological threshold and the need for flexible definitions for different purposes.

The productive working population is often assumed for statistical purposes to be 15 (or even 20) to 64, linked to an assumed/common age of ‘retirement’, or at least eligibility for a state or other pension at age 65 – though that is not necessarily the statutory age for retirement or pension eligibility, nor is it necessarily indicative of when people withdraw from participation in the formal labour market, let alone from participation in the informal economy.

Setting a chronological threshold at which a person becomes an ‘older person’ and treating all persons above that age as belonging to the group of ‘older persons’ also has its limitations, given the increasing number of persons living into their 70s, 80s, and so on. Frequently, statistical information does not break down the different cohorts above the ‘older age’ threshold. Given the diversity within the various cohorts and between different cohorts, a much more nuanced approach is required.

Governments understandably have a preference for a precise criterion for determining whether a person has reached older age. Where public policy provides specific benefits such as an old-age pension to a person once they have reached a later stage of life, a specific age threshold provides a clear basis for eligibility for that benefit. Such precision also helps governments...
Older persons are extremely diverse in their characteristics, thus making reliance on broad chronological categories or stereotypes about the attributes of all or most older persons problematic.

to estimate changes in revenue and expenditure that are likely to result from a specific cohort reaching the age threshold for the benefit.33

On the other hand, for other purposes a precise chronological age may not be appropriate for determining whether a person has been denied the equal enjoyment of their rights on the basis of older age. For example, in the labour market in many developed countries, discrimination on the basis of age in hiring, promotion, or access to other career opportunities is often found to exist against those in their 40s and 50s, with women often experiencing such discrimination earlier than men. Thus, a law that is designed to protect against discrimination on the ground of older age in work may need to use a different threshold34 or no threshold at all (prohibiting discrimination on the basis of age).35

The difficulties of defining ‘older age’ or ‘older persons’ are also important for the elaboration of any new binding international instrument on the subject. While current proposals speak of a convention to guarantee the human rights of ‘older persons’, others have suggested that the better approach is to develop a treaty that guarantees protection and enjoyment of all human rights without discrimination on the basis of ‘older age’. The latter approach does not ‘reify’ the group of older persons and better reflects the diversity of the group, the social construction of older age, and the limitations of setting a chronological threshold defining the groups of beneficiaries for some or all purposes of the treaty.

But in either case some definition or description of ‘older age’ or ‘older person’ would be required to clarify the extent of State parties’ obligations and who benefits from the treaty’s guarantees at what stage in life. Flexibility will be required in any such definition, to allow individual States parties to tailor the definition to local contexts and in relation to different areas of life.

Only two of the existing human rights treaties that refer explicitly to age or to ‘older persons’ or ‘the elderly’ include a definition of older persons. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa defines ‘older persons’ as aged 60 or above.36 The Inter-American Convention on the Protection of the Rights of Older Persons defines an older person more flexibly as a ‘person aged 60 or older, except where legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years.’37 The Inter-American Convention in particular recognises the socially constructed nature of ‘older age’, defining old age as the ‘social construct of the last stage of the life course’ and ‘ageing’ in the following terms:

“Ageing: A gradual process that develops over the course of life and entails biological,
physiological, psychosocial, and functional changes with varying consequences, which are associated with permanent and dynamic interactions between the individual and their environment.”

c. Diversity of Older Persons and Intersectionality

Older persons are extremely diverse in their characteristics, thus making reliance on broad chronological categories or stereotypes about the attributes of all or most older persons problematic. Persons 'aged over 60’ will include those in their 70s, 80s, 90s, and older. They will be as diverse as a group of persons aged between one and forty. We would not lump together as a cohort persons aged one to forty, so we should not treat persons aged over 60 as a cohort. Older persons’ situation may vary according to sex, gender, disability, race, indigeneity, country, employment status, caring responsibilities, socio-economic status, urban/rural status, ethnicity, home ownership status, and many other factors.38

This diversity means that a focus on chronological age is often not an effective proxy for identifying the attributes of subgroups of older persons. Looking at chronological age alone, without considering the intersection with other statuses and attributes, limits our understanding of older persons’ situation and the specific forms of discrimination or exclusion that they face. This affects many aspects of policy development and implementation – from identifying the subgroups that need to be consulted when policymaking, to ensuring that laws that provide for remedies for age discrimination allow claims of intersectional discrimination based on age as well as other factors.39

d. The COVID-19 Pandemic and its Relevance to the Human Rights of Older Persons

Although almost all persons in the world have been affected by the COVID-19 pandemic, older persons appear to be the largest affected group. The risks of disease and mortality following infections have been higher compared to the total population.40

The disproportionate number of deaths of older persons in certain countries and regions compared to others (particularly in care homes)41 raises questions of access to medical care. According to the Madrid International Plan of Action on Ageing, older persons can experience age-based discrimination in the provision of services when their treatment is perceived to have less worth than the treatment of younger persons. The refusal of health care is a violation of the right to life. For instance, the European Court of Human Rights (ECtHR) repeatedly decided in cases connected with the functioning of health services and social care in the context of violations of the right to life (Article 2). The court held that in certain circumstances, such as no access to medical care or limited access to medications, violations of Article 2 of the European Convention on Human Rights (ECHR) may occur.42

The implications of the pandemic for older persons are more than the disproportionately high risk of mortality. Many of the measures taken in response to the pandemic give rise to particular consequences for older persons. The essential care and medical services that older persons often rely on are under pressure, including care and support services for older persons living in their own homes; and the
abuse and neglect of older persons living in institutional aged care tend to escalate when the oversight or monitoring of the facilities is weakened because of social distancing. Social exclusion contributes to a higher risk of further deterioration in public health.

Older persons also experience similar difficulties as other age groups, such as deteriorating mental health and economic well-being as a result of lockdowns or other restrictions on social interactions. Older persons are also health workers, caregivers, and volunteers. Thus, older persons play multiple roles in this crisis just as they do in everyday life. However, the differential needs among older persons have been overlooked, and these circumstances illustrate the broader situation of human rights issues for older persons.

The impact of the pandemic on older populations in the world may be a consequence and a reflection of the weak social and legal position of older people in many societies. It is not just that many older persons belong to risk groups. Despite recurring proposals for measures to strengthen the living conditions for this group nationally, regionally, and internationally, little has been done. Even when there is no global pandemic, all countries have to contend with many health risk factors for older persons. With the pandemic, the risk factors have multiplied.

The vulnerability of older persons during the crisis signals a structural public health problem in many parts of the world. The difficult conditions for older persons may be an indicator of poor living conditions for older people as a social group. This also applies in countries where health and prosperity generally is taken for granted regardless of age group. The high death and illness rates of the older population reflect a vulnerable group in most societies. Vulnerability is not just about old age and an increased disease picture. There are also social protection needs that may contribute to the vulnerability. These are particularly the living conditions of older persons, such as forms of housing, care and nursing which have proved insufficient to protect the old population.
The pandemic has highlighted the high public health risks faced by older persons, with great care and support needs. There is reason to pay attention in the coming years to this group in the population whose ability to influence its situation may be limited, especially the responsibility to scrutinise and provide good housing, care, and nursing interventions for these groups. It is evident that persons over 60 are a group significantly affected by the COVID-19 virus and its side effects, although the impact has varied among subgroups. Yet, the vulnerabilities and differential needs have been overlooked in some States’ responses to the crisis. ‘Older persons remain chronically invisible despite pandemic spotlight’ a UN expert explains. Indeed, many States have mismanaged the protection of older persons and there has been a reluctance to involve older persons in the response process. Moreover, as COVID-19 has been increasingly characterised a ‘an ‘older people’s disease’, there is a risk that older persons are increasingly affected by ageism and social stigma resulting from this. The UN has urged better protection of older persons since the beginning of the crisis and concerns have been raised about decisions on access to scarce critical medical services being based on age. For example, there is a need to examine why such a large proportion of COVID-19 deaths in Europe and other countries (such as Canada and Australia) has occurred in long-term care settings.

There is a risk for the negative consequences of physical isolation and far-reaching lockdowns. The UN OHCHR Guidance has emphasised that limiting contact with families as a part of emergency measures may result in older persons being further exposed to neglect and abuse. Mental health is just as important for older persons as their physical health. Measures that exclusively rely on social isolation may jeopardise their mental health as many older persons live alone. They also often rely on home and community services and support. The light shed on older persons in these times of crisis may risk magnifying ageism. Nevertheless, the situation may also distinguish the normalised patterns which impede the recognition of older persons’ rights. States’ approaches towards older persons are being conceptualised in light of the COVID-19 crisis and it reveals outdated views on older persons at times. Since the adoption of the Madrid International Plan of Action on Ageing, the international community has been facing a paradigm shift from a welfare approach to a human rights approach, recognising older persons as subjects of human rights rather than passive benefits and welfare recipients. Some early State responses demonstrated a paternalistic approach to older persons, failing to recognise them as rights holders. Thus, the much-vaunted paradigm shift, which advocates for older persons’ rights, has not completely triumphed. With this acknowledgement, it is imperative for States to actively work for the complete recognition of older persons’ rights.

The fatal direct consequences of the pandemic for older populations will most likely require major efforts during the health crisis and thereafter for continued trust and legitimacy.
III. INTERNATIONAL, REGIONAL AND NATIONAL PROTECTION

a. Rights of Older Persons at the International Level

There is no legally binding international agreement that explicitly and comprehensively addresses the human rights of older persons or that guarantees equality and non-discrimination on the basis of older age. There are a number of non-binding universal human rights instruments such as the United Nations Principles for Older Persons51 and some non-binding instruments relating to particular sectors such as employment;52 many policy documents have been adopted, the most prominent of which is the Madrid International Plan of Action on Ageing 2002.53

The extent of coverage under universal instruments is of particular importance for countries in the Asia and Pacific region because there is no binding regional human rights treaty or comprehensive regional monitoring mechanism in relation to human rights generally or to the rights of older persons in particular, and the sub-regional instruments and mechanisms in the ASEAN region do not provide explicit international binding guarantees (see Section III.c below).

Despite the lack of a comprehensive binding instrument that explicitly protects the human rights of older persons in international human rights law, older persons enjoy protection of their human rights under other general and thematic human rights treaties. The guarantees contained in treaties such as the International Covenant on Civil and Political Rights (ICCPR) 196654 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 196655 apply to ‘everyone’ and include persons of any age. These include the classic civil and political rights such as the rights to life, freedom from torture, freedoms of expression, assembly, thought and belief, the right to respect for privacy, home and family, the right to participate in political and public life, equality and non-discrimination, rights to education, an adequate standard of living, social security, and work, among others. In some cases, the older age of a person may be relevant to how a right is interpreted and applied in a given instance – for example, in relation to the need to expedite a civil proceeding, or what constitutes inhuman or degrading treatment.

In addition to the protection afforded by free-standing rights, implicit guarantees of equality and non-discrimination on the grounds of older age are contained in the general non-discrimination provisions of some international human rights treaties. For example, both the ICCPR and the ICESCR guarantee the enjoyment of the rights listed in those conventions without discrimination on a number of grounds such as ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status’.56 The category of ‘age’ does not explicitly appear in these guarantees but the phrase ‘other ‘status’ has been interpreted as extending to age discrimination, including discrimination on the basis of older age.

Adequacy of the International Human Rights Law Framework

Despite the theoretical and formal coverage of some of the human rights of older persons by the international human rights framework, it has been argued by scholars,57 older persons’ advocates,58 United Nations independent experts59 and some governments that international human rights norms and mechanisms have not been sufficient to contribute significantly to stimulating changes at the national level that will improve the enjoyment by older persons of their human rights.60 There is general agreement that many older persons suffer violations of their human rights and dignity across the range of human rights.
The reasons identified for the inadequacies include the conceptual limitations of existing guarantees, their failure to address explicitly specific violations suffered by older persons, and a failure to adequately interpret and apply existing guarantees in relation to the situation of older persons.

Concern that the performance of the international human rights framework was not doing all that it could to improve older persons’ enjoyment of their human rights in their daily lives led the United Nations General Assembly in 2010 to establish an Open-ended Working Group (OEWGA) to explore how the position might be improved. Member States of the United Nations, national human rights institutions, non-governmental organisations and other stakeholders have all participated in the work of the OEWGA, which has held 10 sessions since its establishment. The OEWGA has received hundreds of submissions from stakeholders, held dozens of panel discussions and engaged in other forms of plenary deliberation during that time.

One of the main issues considered by the OEWGA has been whether it should recommend to the General Assembly the adoption of a new normative instrument on the human rights of older persons and, if so, what the elements of such an instrument should be. After a number of sessions at which there were general discussions of the state of older persons’ human rights in the world, the OEWGA moved to a sequenced discussion of central issues with a substantive discussion in one year followed by a focus on possible normative elements (that is, matters that might be included in a treaty) relating to that particular area in the next. This approach was undertaken in the hope that by focusing on specifics, the inadequacies of the existing framework would be made even clearer, thus strengthening the case for a new binding human rights instrument.

Although there is significant support from many member States, national human rights institutions, and non-governmental organisations for the elaboration of a new convention on the subject, a significant number of member States are not persuaded of this. As a result, as of the end of the 10th session of the OEWGA, member States as a whole had not yet reached a consensus on the issue and thus the question has not yet been resolved in favour of developing a new instrument.

Recommendations (b) to (f)

ASEM Partners should consider taking a number of steps in relation to better maintenance and further strengthening of the international human rights system, including:

- considering the ratification of or accession to treaties to which they are not yet party,
- supporting the elaboration of a new United Nations convention on the human rights of older persons and participating constructively in the UN Open-ended Working Group on Ageing,
- and ensuring that they include material, including disaggregated data on older persons, in their reports under UN human rights treaties and their progress reports on implementation of the Sustainable Development Goals.
b. Rights of Older Persons at the Regional Level: Europe

When speaking of the rights of older persons at the regional level in Europe, there are two important overlapping political communities and corresponding human rights regimes. These are the European Union, with its 27 member States (28 until the recent departure of the United Kingdom) and the Council of Europe, an organisation committed to enhancing cooperation in legal, human rights and social affairs that has a membership of 47 member States including all EU members but others as well, ranging from Iceland to Azerbaijan and Russia in the east. The 53 ASEM Partners include all members of the EU and 32 of the 47 members of the Council of Europe.

The EU can in many respects be described as an ageing society. For many years, demographic ageing has been identified as a major challenge for the future of the Union. Increased life expectancy combined with declining birth rates is a cause for concern, not least as regards the future costs of supporting the older population, but also who will care for and provide care for older persons. Another concern within the EU is that a number of EU countries have a large proportion of young workers who migrate for employment; this can lead to difficulties for the support of older family members when they are left without their younger family members in the home country. To meet these challenges concerning the growing older population, various policy approaches have been discussed within the EU over the last two decades. In its regular reports, the European Commission has, for example, analysed the expected effects of Europe’s aging population, focusing in particular on the long-term economic and fiscal consequences.

Legal Frameworks and Monitoring Mechanisms

The Council of Europe

Within the Council of Europe, the principal general human rights treaties are the European Convention on Human Rights (ECHR), which has been supplemented by a number of additional protocols, and the Revised European Social Charter of 1996. All member States of the Council of Europe (and thus all member States of the EU) are parties to the ECHR; acceptance of that instrument is effectively a precondition for EU membership. Acceptance of the Revised European Social Charter, however, is not required and, as of the end of 2020, 34 members of the Council of Europe were parties to the Revised Social Charter, with 11 States having signed but not ratifying the treaty, and two not having signed the treaty.

Other human rights treaties adopted by the Council of Europe are the Convention on Human Rights and Biomedicine adopted in Oviedo in 1997, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, and the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) adopted in 2011. Furthermore, the Council of Europe is a forum in which a variety of non-binding documents related to the rights of older persons has been adopted.

The European Court of Human Rights was established under the ECHR to adjudicate on complaints that States parties to the Convention have violated the rights guaranteed in the Convention and its additional protocols. The Court, based in Strasbourg, has the power to issue judgments that are binding on States.
under international law and has developed a vast body of case law interpreting the Convention.

The European Social Charter establishes the European Committee on Social Rights, a committee of independent experts that has responsibility for monitoring implementation of the Charter in contracting States by reviewing their reports and, more recently, considering collective complaints alleging violations of Charter obligations. Although the Committee’s views are not legally binding judgments, States are required to give due weight to their implementation. As with judgments of the European Court of Human Rights, the implementation of decisions of the Committee is subject to the supervision of the Council of Ministers of the Council of Europe.

The European Union

The European Union embodies a supranational legal framework in which norms of European law will normally prevail over provisions of national law; the fundamental treaties of the EU, as well as EU Regulations and Directives, are the major forms of binding norms. There are a number of human rights guarantees in the fundamental treaties, but for present purposes the most important binding document is the EU Charter of Fundamental Rights (EU Charter), adopted in 2000 but made explicitly binding in an amended form by the Treaty of Lisbon (2009) from 2010. The EU Charter binds the institutions of the EU and its member states when implementing EU law.

The Court of Justice of the European Union (CJEU), based in Luxembourg, is the judicial institution of the EU and it has power to provide binding rulings on matters of EU law and their relation to national laws: this includes the effect of the EU Charter and of various EU Directives that require member States to give effect to EU human rights standards. The field. It has developed an extensive jurisprudence on human rights. Although it has held that non-discrimination in respect of age is a general principle of EU law, the Court’s jurisprudence in relation to issues of age discrimination is rather limited, with many of its most prominent cases concerning the permissibility of mandatory retirement ages or laws regulating eligibility for retirement benefits.

Substantive Norms Explicitly Protecting the Rights of Older Persons in the Council of Europe and the European Union

At present there is no comprehensive, detailed, and integrated legal regional instrument guaranteeing older persons’ human rights in place for the European region, whether defined as the Council of Europe region or the European Union.

Moreover, the ratification of treaties embodying social and economic rights, for example, the European Social Charter, remains less than universal. This is concerning since social rights play a significant role for many of the issues older persons are facing. Thus, the human rights protection stemming from legally binding obligations is limited in terms of group-specific rights and falls short in those material rights especially important for older persons.

Although a number of treaties provide protection against discrimination in the enjoyment of rights set out in those instruments, not all refer expressly to age as a prohibited basis of discrimination. Article 14 of the European Convention on Human Rights guarantees protection in the enjoyment of the rights set out in the Convention and its additional protocols. ‘Age’ is not explicitly included in the list, although ‘other status’ has been understood as including age-based
discrimination. Article 1 of Protocol 12, adopted in 2000, expanded protection against discrimination under the Strasbourg system by providing for a freestanding guarantee of non-discrimination, but did not explicitly add ‘age’ as a ground to the list of enumerated grounds in Article 14.

However, the exclusion of such a basis, together with the lack of material rights for older persons, indicates a perspective that neglects equality for older persons in this framework. As discrimination solely based on age has been proven common in the context of employment (as well as age in combination with other grounds such as sex), the ECHR regime also fails to cover this area as with many other social issues. To date, the Court has not articulated a clear and persuasive interpretation of substantive equality as it relates to age, including imposing an obligation upon States to take positive compensatory measures in areas where older persons tend to be systematically disadvantaged.

Article E of the Revised Social Charter provides protection against discrimination on grounds that largely track those in Article 14 and Protocol 12, adding ‘health’ as a prohibited ground but not explicitly referring to age. The phrase ‘other status’ has also been interpreted to apply to discrimination on the basis of (older) age.

Age discrimination is a form of inequality that in a number of respects is normalised and seen as justifiable within legislation and policies of the European Union. For instance, it is the only ground of discrimination for which EU law stipulates that direct discrimination can be objectively justified. While Europe has a well-developed discrimination regime in relation to a number of grounds of discrimination, that is not the case in relation to older persons and age discrimination. Instead, there is rather a widespread acceptance of policies and strategies that directly distinguish between people of different ages, without any consideration for what this means for the equal enjoyment of rights by older persons.

On the other hand, Article 21(1) of the EU Charter explicitly includes ‘age’ as a prohibited basis of discrimination. Furthermore, the Employment Equality Directive adopted in 2000 provides protection against discrimination in employment and occupation) on a number of grounds including age, though its provisions setting out the circumstances in which mandatory retirement have been criticised as permitting unjustifiable discrimination. However, this protection is limited to the field of work, and a decade-long effort to secure the adoption of a new Directive, which would have been legally binding and would have extended protection against discrimination on the

There are few provisions in European law that go beyond a simple reference to age discrimination. Both the EU Charter of Fundamental Rights and the Revised Social Charter include a provision relating specifically to older persons (described as ‘the elderly’ in each case).
basis of age as well as on other grounds beyond the area of employment was abandoned in 2020.

There are few provisions in European law that go beyond a simple reference to age discrimination. Both the EU Charter of Fundamental Rights and the Revised Social Charter include a provision relating specifically to older persons (described as ‘the elderly’ in each case). Article 25 of the EU Charter recognises ‘the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life’. However, this mainly relates to European regulation.

A similar provision is found in the Revised Social Charter, which guarantees the right of older persons to social protection (Article 23). That provision calls for a flexible, wide interpretation and its material content thus overlaps with other social rights articulated in the Charter. The European Committee on Social Rights has described the provision as pointing ‘towards a new and progressive notion of what life should be like for elderly persons’.

The ECHR, as interpreted and applied by the ECtHR, is considered one of the most effective instruments of human rights protection in Europe. However, its downside is that its coverage does not explicitly extend to most social and economic rights (though it has been interpreted to address some indirectly), and thus the ECtHR is therefore extremely limited in its ability to consider complaints that relate to violations of the human rights of older persons. Nevertheless, there are a number of cases involving older persons before the ECtHR, in some of which the fact that the applicant is an older person or the situation in which they find themselves is considered in deciding whether there is a violation of a specific right such as cruel, inhuman or degrading treatment. However, it cannot be said that the ECtHR has developed a coherent, comprehensive and detailed jurisprudence on the human rights of older persons, including application of the concept of substantive equality in such cases, even though it has considered many cases involving ‘older’ applicants.

Nor has the CJEU performed much better in this regard. Few cases have come before it involving age discrimination other than mandatory retirement cases. Its decisions in mandatory retirement cases, while reflecting the policy choice of the legislator to legitimise some forms of direct age discrimination, have not done a great deal to develop understanding of age discrimination and ageism or to change established stereotypes. For example, it has concluded that it is acceptable to force older workers to retire in order to prevent inquiries into employees’ fitness to work beyond a certain age, something which itself embodies ageist assumptions.

Finally, the two apex European courts have struggled to come to terms with the concept and realities of intersectionality in relation to older persons. This concept has been influential in developing discourse about discrimination for many targeted groups in Europe, yet a one-dimensional view has prevailed in terms of older persons. Intersectionality, which acknowledges the multiple and combined grounds for discrimination against older persons, is extremely important for the achievement of equality. This is generally the case, and thus certainly important in Europe with its many minority groups, economic standards, ethnicities, and long fight for women’s emancipation – which evidently also exists amongst older persons.

The European Committee on Social Rights has considered only a small number of cases involving discrimination on the ground of older age, but in those cases has done a reasonable job of dealing with the issue.
Recent Policy Developments in the EU Context

Efforts have been made both within the Council of Europe and the EU to expand the legal protection of the human rights of older persons and also to develop policy measures to enhance their realisation. In 2014, the Council of Europe adopted a non-binding recommendation for the promotion of older persons’ rights, which covers issues including autonomy and participation, social protection and employment and protection from violence and abuse. This ‘soft law’ (that is, not legally binding) document, while a useful reference point and stimulus to action, does not have the same power or legal effect as a legally binding instrument does, but these generally lack the perspective of older persons.

Although efforts to adopt a new anti-discrimination directive that would have extended protection against age discrimination as well as other forms of discrimination beyond work did not succeed, there is nonetheless considerable interest in European institutions in enhancing the frameworks for protecting the human rights of older persons. The European Pillar of Social Rights, adopted by the EU institutions in 2017, is a non-binding statement of principles and aspirations that addresses a range of social issues and rights particularly relevant to older persons. More recently, the Council of the European Union adopted Council Conclusions which endorsed the taking of additional measures informed by a human rights approach to better ensure the human rights of older persons. In addition, the Governments of Germany, Portugal and Slovenia – the member States holding the six-month Presidency of the EU consecutively from mid-2020 to the end of 2021 – adopted the Trio Presidency Declaration on Ageing, which affirmed the importance of ‘an age-integrated, rights-based, life-course perspective approach to ageing’, mainstreaming ageing and a number of other objectives, though in neither of these documents is there a clear commitment to supporting the elaboration of a new binding instrument. Most recently, in January 2021, the European Commission issued a Green Paper on Ageing intended to stimulate ‘a broad policy debate on the challenges and opportunities of Europe’s ageing society’. It covers many areas but does not explicitly refer to the relevance of human rights to ageing policy or to the desirability for strengthening international and regional frameworks for the protection of the human rights of older persons.

c. Rights of Older Persons at the Regional Level: Asia

The Asian region has the least developed regional human rights law framework generally and also in relation to the human rights of older persons. Whilst the United Nations human rights treaties and conventions adopted within the framework of bodies such as the International Labour Organization (ILO) and United Nations Educational, Scientific and Cultural Organization ( UNESCO) apply to Asian and Pacific States if they have ratified them, the substantive and procedural limitations of the UN human rights framework apply in this region as well elsewhere and are not supplemented by regional initiatives. There is no regional human rights treaty of general application that applies throughout all or most of Asia and the Pacific. Nor are there any thematic regional treaties that engage explicitly with the rights of older persons. The same is true at the subregional level. Although a number of treaties adopted within the framework of the South Asian Association for Regional Cooperation (SAARC), including the SAARC Social Charter and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia,
have human rights-oriented goals, they are not formulated as rights-conferring instruments and provide no mechanism for individuals to enforce their rights under them. Nor is there any specific mention of older persons in those treaties, and there is no SAARC treaty that addresses in detail the human rights of older persons.

Within the Association of Southeast Asian Nations (ASEAN) there has been progress both in terms of the development of non-binding human rights instruments and specific human rights mechanisms applicable to ASEAN member States.

Article 1(7) of the Charter of the Association of Southeast Asian Nations stipulates that one of ASEAN’s fifteen purposes is:

“to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of member States of ASEAN”.95

ASEAN and its Member States commit to act in accordance with 14 principles including ‘respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice’.96 The Charter does not, however, specifically confer any rights on individuals or establish any human rights mechanisms.

On 18 November 2012, the member States of ASEAN adopted the non-binding ASEAN Declaration on Human Rights. Article 2 of the Declaration provides that every person ‘is entitled to the rights and freedoms set forth [in the Declaration], without distinction of any kind such as . . . age . . . ’, while Article 4 states that ‘the rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms’, and the Declaration guarantees a range of other civil, political, economic, social and cultural rights. There is no ASEAN declaration or similar instrument on the human rights of older persons.

ASEAN has established three bodies with specific human rights mandates: the ASEAN Intergovernmental Commission on Human Rights (AICHR) (2009), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) (2010) and the ASEAN Committee on Migrant Workers (2007), the last body established to promote and monitor the implementation of the 2007 ASEAN Declaration on the Protection and Promotion on the Rights of Migrant Workers.

The AICHR has a broad mandate, including the promotion of the implementation of the ASEAN Declaration. However, the human rights of older persons have not been a major priority for the AICHR since its establishment. There has been some reference to older persons in the thematic studies prepared by AICHR: the 2019 AICHR study on legal aid considered the position of ‘the elderly’ among other social groups on the availability of legal aid in ASEAN member States and similarly in its 2017 thematic report on women in natural disasters. However, the AICHR made no mention of older persons or ‘the elderly’ in its report on the right to education and promoting access to tertiary education or on corporate social responsibility and human rights in ASEAN.97 Nonetheless, issues relating to older persons, generally mentioned in the context of other groups such as persons with disabilities, are included in the latest work plan of the Commission for the period 2021-2025.98

The ASEAN Commission on the Promotion and Protection of the Rights of Women and
Children (ACWC) has focused in particular on the elimination of violence against women and children and trafficking in women and children. The human rights of older women do not appear as a particular priority in its work plans. The ASEAN Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children, adopted on 9 October 2013, contains no explicit reference to older women or ‘elderly’ women, though in its Preamble it lists seventeen other groups of women and children who may be particularly affected by violence (preambular paragraph 9).

d. Rights of Older Persons at the Regional Level: The Americas and Africa

Although the ASEM Seminar focuses on the international level and the regions of Europe and Asia, it is not possible to describe the international framework for the protection of the rights of older persons without referring to recent developments in the Americas and in Africa, as explicit and wide-ranging protection of the human rights of older persons is provided in each of those regions by a comprehensive thematic treaty. In 2015 the Organization of American States adopted the Inter-American Convention on Protecting the Human Rights of Older Persons, while in 2016 the African Union adopted the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa.

There are also other regional treaties in these two regions that guarantee the rights of specific social groups and explicitly refer in some provisions or optimally have an operation in relation to some sub-groups of older persons. These include the African Union’s Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa 2003, which contains provisions specifically addressing the position of older women or issues likely to affect older women disproportionately. In both the Americas and Africa the regional organisations have adopted thematic treaties guaranteeing the rights of persons with disabilities, which would include protection for the rights of older persons with disabilities. There appears to be little literature assessing the practical impact of these regional treaties on enhancing the rights of older persons.

e. International Standards, National Protections and Practical Implementation

In this report we focus on international and regional human rights standards. These provide important frameworks for the design of national laws, policies, and programmes, and in some cases these international and regional norms may be directly applicable as part of national law. This is so in the case of certain norms of EU law and in many European countries, international treaties – including the European Convention on Human Rights and other UN and regional human rights treaties – may be part of domestic law, although the practical impact of this varies. The existence of these regional frameworks that are directly enforceable or that provide strong policy frameworks for national level developments are features of the EU and the Council of Europe.

While there are challenges in making general statements about protection in Europe, those challenges are even greater in the context of Asia. The diversity in legal systems, stages of development and cultural traditions is enormous among the different regions and countries of the Asian and Pacific region. The absence of a binding regional human rights framework or, indeed, subregional frameworks – in particular, a regional system such as the EU where EU law has primacy over national legal systems – means that
the most important international human rights frameworks are those set out in UN human rights instruments. Most ASEM Partners in the Asia and Pacific region have accepted the principal general UN human rights treaties (ICCPR and ICESCR) and all of them have accepted important thematic treaties such as CEDAW, CRC and CRPD. Yet the monitoring and enforcement procedures for these UN treaties are more diffuse than those in place for EU and Council of Europe treaties, especially in the field of civil and political rights but also for economic and social rights. The place of international treaties in domestic legal systems varies among the many legal systems of Asia, and even in those jurisdictions where treaties are formally part of domestic law, the practical impact of that formal position before courts and tribunals is often unclear.

Our focus on international and regional norms takes as its starting point that these legally binding norms are important because they provide a universally endorsed framework for developing and assessing national laws and policies, monitoring progress in their implementation and stimulating the provision of remedies for failure to respect the rights guaranteed. Laws and policies implementing human rights treaty obligations must, of course, be developed in the specific national context. By setting up systems for external monitoring on a regular basis, international treaties also provide a framework by which governments can get independent expert feedback and have an opportunity to develop capacity and knowledge in the field, and according to which national bodies such as legislatures, courts and other public bodies, as well as the broader community, can assess governments’ actions and hold them accountable for ensuring the full realisation of rights and the provision of remedies in case of violations. Of course, national constitutions and laws often have much greater influence on national courts, legislatures, government bodies and the community than international treaties. Thus, the ultimate goal is to ensure that these provide protection that is at least as good as international standards and ideally even better. In both Europe and Asia there are varying levels of constitutional and legislative protection of the human rights of persons in older age: these include specific guarantees that explicitly refer to old age or older persons and general guarantees of non-discrimination or equality that are interested as applying to older persons or older age.

Explicit protection in constitutions and legislation is uneven across the world, including in Europe and Asia and the Pacific. Summarising submissions to the Open-ended Working Group which responded to the question whether the State’s constitution guaranteed equality ‘explicitly’ for older persons or for persons of all ages or prohibited discrimination ‘explicitly’ on the basis of age, the UN Department of Economic and Social Affairs (UNDESA) reported:

“Very few countries provide explicit guarantees of equality and non-discrimination on the basis of age. The majority of responses indicated that the general principle of equality and non-discrimination is covered in most Constitutions and national laws. Most of them do not make explicit reference to age as a ground for discrimination to be prohibited, or guarantee equality explicitly for older persons. Where such explicit reference to age or older persons exists, the scope of coverage tends to be limited to employment and does not extend to other spheres of life.”
At the same time UNDESA also noted, drawing on a 2013 ILO report, that in relation to protection against discrimination in employment, ‘there has been steady progress in the adoption of legal provisions prohibiting discrimination on the basis of age.’ Nonetheless, even where protection does exist, ‘the scope and coverage are uneven compared to guarantees against discrimination on other grounds.’

This uneven constitutional and legislative protection of the human rights of older persons or against older age discrimination is seen in countries across the Asia Pacific region, though comprehensive comparative data and analysis is not readily available. In its 2017 submission to the OEWGA, UN ESCAP reported that responses from 25 Asia Pacific countries to a MIPAA (Madrid International Plan of Action on Ageing) review survey suggested that ‘only 40% of the respondent countries have national legislation on older persons’ rights or have specific provisions for older persons in universal rights legislation, such as laws on domestic violence.’ The same contribution noted that ‘age-based discrimination is part of constitutions and universal rights legislation[] in a majority of 25 respondent countries’, which suggests that there is some level of general or specific constitutional protection in those countries as well.

In any case, it appears that even in relation to those countries that responded, there is a significant shortfall of explicit constitutional legislative protection of older persons or against discrimination on the grounds of older age (though an examination of whether such guarantees as do exist are in practice applied to older age). Further, not every piece of legislation that is claimed to provide protection is necessarily based on sound non-ageist human rights principles. Implementation is also an issue: UN ESCAP noted that ‘even when legislative measures are available their effectiveness is often curtailed by the lack of institutional mechanisms to report and record discrimination cases, as well as measures to prevent their re-occurrence.’

This brief review suggests that there is much more to be done in terms of providing explicit protection against discrimination on the basis of older age in constitutional law, employment, and other areas.

Recommendations (g) and (h)

ASEM Partners should consider strengthening existing regional or subregional human rights frameworks, institutions and procedures, including through the adoption of legally binding instruments and complaint procedures where these do not already exist or are not sufficiently comprehensive in coverage or are ineffective in providing adequate remedies to older persons; and ensure that human rights monitoring bodies at the international regional and subregional levels have sufficient resources to effectively carry out their mandates.
In this section of the background paper, we take up four thematic areas that have been identified as important for the realisation of the human rights of older persons. These are a selection from a much longer list of areas identified in documents such as the Madrid International Plan of Action on Ageing (MIPAA) and which are being considered by the UN Open-ended Working Group on Ageing (OEWGA) and in other fora focusing on ageing and human rights.

We also emphasise the interrelatedness of these areas and rights with other rights. It is a common slogan that all human rights are interrelated and interdependent: in the case of the human rights of older persons this is also evident. For example, the ability of older persons to enjoy the right to non-discriminatory access to work may depend on their enjoyment of the right to education insofar as it guarantees them access to lifelong learning permitting them to update their skills in response to technological and other changes in the workplace. The right of an older person to an adequate standard of living will depend in part on the extent to which they enjoy the rights to work or social protection and the right to adequate housing. Ageism has been shown to have detrimental impact on older persons’ physical and mental health, so a right to be free from being treated on the basis of ageist stereotypes and practices is important to the realisation of that right as well as other rights. There are many other examples that illustrate the interactions and interdependence.

The issues and rights discussed are a subset of those that are important for the realisation of the human rights of older persons: they both influence the enjoyment of and are affected by the realisation of other rights. This discussion is therefore intended both as a substantive discussion of the themes chosen but also underlines the importance of applying a human rights-based analysis that draws on the perspectives of older persons to other areas as well.

In each case we give a brief description of some of the principal challenges and barriers that older persons face in particular areas. We refer to existing human rights standards that clearly apply to these areas and the extent to which older persons actually enjoy those rights. We also indicate limitations or gaps in coverage or instances in which a more explicit formulation of a right that is tailored to the particular circumstances of older persons or a relevant subgroup would enhance the enjoyment of their human rights and fundamental freedoms.

a. Autonomy and Independence of Older Persons

The concepts of autonomy and independence of the individual are fundamental to the international human rights framework. The two concepts, though related, have different meanings, as noted by the UN Human Rights Council’s former Independent Expert on the human rights of older persons:

“Autonomy and independence are mutually reinforcing and are often used interchangeably in legal instruments and frameworks. While autonomy refers to the ability to exercise freedom of choice and control over decisions affecting one’s life, including with the help of someone if needed, independence means to live in the community without assistance or, at least, where the amount of help does not subject older persons to the
decisions of others. In that sense, the concept of independence is broader than autonomy...”

No explicit guarantee of autonomy and independence appears in the principal UN human rights treaties, although the CRPD states as one of the general principles of that treaty ‘respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons...’. Nonetheless, autonomy and independence are implicit in, indeed fundamental to, many of the rights that are explicitly guaranteed, such as the right to liberty and security of the person, the right to respect for one’s private life, the right to recognition as a person before the law; right to health (and to make decisions about whether and what treatment to consent to), among others.

A UNDESA report summarising stakeholder submissions to the Open-ended Working Group on Ageing on autonomy and independence concluded:

“...the concept of autonomy itself, certainly when paired with that of independence, is not only a general statement of the right to take one’s own decisions and to have them respected, but also the right to enjoy conditions that make it possible for older persons in practice to exercise that decision-making capacity, carry out their decisions and have those decisions respected, thus ensuring participation in a broad range of social activities according to the will and preferences of the person concerned.”

The autonomy and independence of older persons is often undermined as a result of ageist assumptions about the capacities, interests and needs of older persons, with a consequent disregard of their desires and views. A related area has been laws, such as guardianship laws, that remove the legal capacity of older persons on the grounds of asserted lack of capacity.

Earlier in this report, the complexity of the concept of ‘older persons’ has been discussed. In a discussion of the autonomy and independence of older persons, this becomes particularly relevant, and therefore deserves a few additional comments here. Using the term ‘older persons’ as a general category of classification risks reflecting certain stereotypes of people from a particular age cohort, their abilities and their needs and desires. In the media, politics, culture, and community discussions older persons are often portrayed as either constantly dependent – in need of state protection because of illness, weakness, loneliness and sometimes lack of money – or not dependent at all, being in good health and with financial and personal resources which enable them to conduct their daily life independently.

Such portrayals do not take into account the fact that like any other age group, perhaps even more so, ‘older persons’ comprises diverse groups of individuals. It seems unlikely that the majority of people who are ‘older’ fit either of these ‘standard’ views – of constant and significant dependency or complete independence. Rather, many of these persons have varying degrees of (in)dependence and live in very different situations, just like the rest of the population. This diverse range of persons and situations must be taken into account when analysing what ‘autonomy and independence’ means for older persons so as to avoid simplistic and discriminatory measures.
Autonomy, Independence and Decision-making

An emphasis on autonomy and independence creates demands on participation and activity on the part of the individual. As noted, very many older persons are as capable of participating in and making independent decisions on all matters concerning political issues, local concerns or their daily life as younger generations are.

Due to age-related or situation-based changes, some older persons may, however, have difficulties in participating, expressing their opinions and making decisions about important matters involving their interactions with the authorities. At the same time, as at earlier stages of their lives, older age often presents people with difficult decisions, such as where they live, and whether and how they arrange for any care or support that they may need. It is in such contexts that family members, public authorities and others in the community too readily assume that older persons do not wish to or are not able to take decisions that serve their best interests and may seek to take over that function to ensure ‘the best interests’ of the person, rather than ensuring that older persons can exercise their own decision-making power, with support if necessary.

This tendency is seen in its most extreme form in the case of guardianship laws – laws that formally remove the legal capacity and repose it in another person, that is a form of substituted decision-making. Always problematic in theory and in practice, many such laws are inconsistent with current human rights standards. These have been articulated in particular in the Convention on the Rights of Persons with Disabilities, which enacts a model of supported decision-making rather than that of substituted decision-making that has historically underpinned guardianship laws in many countries. All ASEM Partners are bound by the CRPD.

The CRPD applies to all persons with disabilities, including older persons with disabilities. It is important to note that, although many older persons live with disability, many older persons do not, so that older age is not synonymous with disability. Further, even if an older person who lives with a disability is treated disadvantageously, this does not mean that the disadvantageous treatment is in every case necessarily based on that person’s older age or disability. It may, for example, be based on the person’s sex or gender, though in such contexts it is important to be sensitive to the role of intersectional discrimination and the way in which discrimination on the basis of age, disability and sex or race may come together in an incident of disadvantageous treatment.

Article 12 of the CRPD contains an important guarantee of autonomy and independence. It is worth quoting the provision in full:

**Article 12 – Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and
effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent, and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages, and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 12(1) and (2) affirm the right to recognition before the law of all (older) persons with disabilities, and Article 12(3) embodies the model of supported decision-making rather than one of substitute decision-making. Article 12(4) obliges States parties to put in place strict safeguards to avoid any abuse, and requires safeguards that respect the rights, will and preferences of the person.

The meaning of the provision has been contentious in some respects, with some interpreters (including the UN Committee on the Rights of Persons with Disabilities) taking the view that Article 12 does not allow for substituted decision-making in any form and that supported decision-making that gives effect to the known or inferred wishes and values of the person is required. Others take the view that there may be a small number of exceptional instances in which substituted decision-making may be permissible. Notwithstanding the debate, there is a large measure of agreement that laws that permit substituted decision-making are frequently too broad and fail to provide support for the persons to take their own decision when such support can be provided.

The Committee on the Rights of Persons with Disabilities has set out its understanding of the article in its General Comment No 1. The Committee notes that often the concepts of legal capacity and mental capacity have been conflated ‘so that where a person is considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed.’ As a result, ‘a person’s disability and/decision-making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.’

The concept of support is ‘a broad term that encompasses both informal and formal support arrangements, of varying types and intensity’ and could include support persons, advocacy support, communication support, universal design and accessibility measures, and advance planning measures, among others.

Given that all ASEM Partner Countries are parties to the CRPD, they should already have undertaken a review of any laws that permit
the removal of a person’s legal capacity and its exercise by another person, or should have such a review planned, so as to ensure that domestic law is consistent with the international obligations set out in the CRPD.

Autonomy, Independence and Rights to Participation

There are also some potential problems with participation rights versus the public limitations in providing opportunities to act independently in all matters (political, social, or personal); therefore also bringing to the fore the interrelation of balancing the right to autonomy with the rights to dignity and integrity.

A challenge for some older persons is that many parts of the world have become increasingly computerised; parts of the older population can suffer from significant exclusion in this regard in many societies. The technical designs and rapid development seldom accounts for the large group of people who lack the ability to actively shape their lives or agree to receive support or service from various vendors. Also, here there are some potential problems with participation rights versus the public responsibility to provide societal support and services for everybody independent of age and capacity.

At the same time, the voices of older people are very much needed in public discussions and debates, to make credible both problems and solutions relating to the society’s responsibility for living conditions and the quality of later life. Therefore, there is a need for political and public discussions and debates regarding how to realise participation for older persons in matters of daily life and personal relations, personal integrity issues, capabilities, and legal security issues.

International Standards

To be able to act independently and autonomously is a way to uphold one’s dignity. Or, expressing it the other way around: not being listened to or getting to participate in a decision concerning oneself may create feelings of neglect or being ignored (for example, whilst receiving care). Therefore, a closely related basic human rights principle is the right to dignity. The right to dignity and integrity is the same regardless of age. Article 1 of the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights. This fundamental principle is repeated in many other international and regional human rights documents. For example, in the first chapter of the EU Charter on Fundamental Rights 2000, made a part of primary law of the European Union after the Lisbon Treaty, it is stated that the dignity and integrity of all persons must be respected and protected by member States. In terms of the recognition and respect for the rights of the older persons to lead a later life of dignity and independence, this is further emphasised in Article 25 of the EU Charter of Fundamental Rights.

Efforts have been made both within the Council of Europe and the EU to expand the legal protection of the autonomy and independence of older persons and also to develop policy measures to enhance their realisation. In 2014, the Council of Europe adopted a non-binding recommendation for the promotion of older persons’ rights, which covers issues including autonomy and participation, social protection and employment and protection from violence and abuse. This ‘soft law’ (that is, not legally binding) document, while a useful reference point and stimulus to action, does not have the same power or legal effect of a legally binding instrument. It is easily over-shadowed by many...
of the legally binding documents, although they generally lack the perspective of older persons.

Independence and autonomy have mainly been considered by the ECtHR through Article 1 of the Protocol No 1 to the ECHR, which guarantees the individual’s right to the peaceful enjoyment of his possessions, Article 5(1), the prohibition on arbitrary deprivation of liberty and Article 6, the right to a fair trial. The overall tendency is that the court has been taking a rather strict, pragmatic approach.

At times, the Court’s decisions arguably demonstrate a paternalistic view. For instance, in a case concerning the choice of a place of residence of an older woman who wished to remain at home under the care of her son, the Court did not see any violation of the right to liberty in ordering the removal of the woman against her will to a nursing home on the basis of the conditions in which she was living and her state of health. It considered that this did not involve a deprivation of liberty and that even if it did, because of her mental state and senile dementia, that it was a justified restriction that fell within the category of permissible detention of persons ‘of unsound mind’.127

The ECtHR came to this conclusion in part because the applicant did not take advantage of other possibilities of care she was offered. In other cases, though, the court has upheld the importance of independence and autonomy of older persons; such as in a case where it was found that the 80-year-old applicant had suffered from unreasonably long administrative proceedings in relation to a refusal to install a telephone line.128 However, the court came to this conclusion given the subject matter of the case, where the court noted the applicant’s advanced age and disability in deciding that she had not had enjoyed the right to a prompt determination of the proceedings. While a reasoning made by the premises of vulnerability might give a much-vaunted conclusion, the court conclusion could be criticised on the ground that rights relating to autonomy and independence should not entirely be dependent on such a subjective and constructed notion.

Participation through Representation: Representation and Remedies

There seems to be an international consensus that there is a need for different forms of public representation in order for some older persons to realise their rights to participation and independence, particularly those without ability to speak for themselves or at least those who are perceived to be incapable. This is based on the idea that many older persons need some kind of representation to promote their individual or group interests. In addition, there is a concern that some older persons need representation because they are particularly dependent and vulnerable to poor decision-making and unfair treatment. Persons suffering from dementia, diminished capacity or mental illness, or other severely dependent individuals, are sometimes given as examples. Another group in the older population mentioned in such discussions is that of persons who have been subjected to elder abuse.

There are different forms of public representation of the rights and interests of individual older persons and older persons as a group. One well-established public model is the ombudsman. Ombudsperson offices often have the role of promoting and protecting human rights against infringements that may result from particular age-related or situation-based dependency. During the 20th century, the institution of the Ombudsman office has increasingly been adopted in many countries across the world and
also by some intergovernmental organisations (such as the European Union). Special Ombudsman offices with a mandate relating to the rights of certain groups of individuals or to particular issues have emerged, including ombudsmen for older persons.

For example, in the United States, local Long-Term Care Ombudsman Programs set up under the federal Older Americans Act provide representation by ombudsmen for senior citizens making individual complaints about the quality of later life in nursing homes and long-term care. Finland is an example of a country with a national ombudsman office for older persons. Australia also has a dedicated Age Discrimination Commissioner as one of the thematic Commissioners in its national human rights institutions, the Australian Human Rights Commission, whose role includes education and awareness-raising and identifying areas where older persons suffer from discrimination and recommending and supporting policy measures to address this.

The Ombudsman institution was originally a way to supervise the exercise of discretionary powers by administrative authorities in situations where the courts cannot provide legal remedies. Since its origins in 1809, the system has expanded, and many other kinds of national ombudsperson offices have developed. The Ombudsman Committee of the International Bar Association proposed the following definition of an ombudsman institution some years ago:

"An office provided for by the Constitution or by action of the Legislature or Parliament and headed by an independent, high-level public official who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees, or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports."

This definition reflects the independence of the office and its duties to represent individuals or groups of individuals within its field of responsibility. It also reflects the different roles and responsibilities that such an office may have.

The institution of the ombudsman highlights some universal concerns for every human being, such as participation, influence, and dignity. These principles are of fundamental importance for all persons, particularly at a time when the emphasis on influence and self-determination creates demands on participation and activity on the part of each individual. Public means for upholding these principles therefore seem essential. Many older people (as others) may be in need of help at some point, to be listened to and assisted by someone else. Thus, an argument in favour of creating institutional arrangements for safeguarding individual and collective actions in favour of older persons would be that such arrangements may fulfil the aim of creating a just and responsive state for older persons.

However, there may be reasons for not establishing a specific ombudsman institution for older persons: one is the problems involved in the description of different generations as distinct groups in society, with separate needs and interests due to vulnerability. Such a group approach ignores the universal vulnerability we all experience throughout life and creates unnecessary distance and differences between individuals and groups in society. The designation of older persons as a vulnerable population reinforces the inferior position of individuals in this group in relation to the putative independent and self-sufficient person who falls...
outside this group. It also creates the risk of intergenerational rivalry and unnecessary and unproductive competition among different groups in society, for example, over whether younger generations or older generations are getting a disproportionate and unfair share of social benefits. This risk is relevant because many societies today face challenges in prioritising distribution of their scarce economic, social, and other resources, although sometimes this a played up in a misleading and distorted way in the media.

A general problem of grouping people by their age into established organisations for increased participation is reflected in the fact that there seems to be little group identity between older persons. Compared to women, ethnic minorities and other groups which have created various civil rights movements around the world, older persons act in groups in the societal context less frequently. It has been suggested that one reason for this is that older adults do not have a cohesive group identity; their age-based identity is often secondary to other identities based on family, religion, occupation, political affiliation, or other factors.136

Older persons are a complex and varied population, and just as for anybody else, with large differences and variations of dependency during their lives. Older persons, like everyone else, live with changing needs and circumstances on a daily basis. This makes their needs as complex and varying as the individuals themselves. Putting this together, it seems relevant to observe the complexity of older persons as a group and the need for many different fora for participation and assistance for independence and autonomy.

Recommendations (i) and (j)

(i) ASEM Partners should review their current legislation to ensure there is explicit constitutional and/or legislative protection against discrimination on the basis of older age (including in conjunction with sex, race, gender identity, migration status and other relevant characteristics) and that legislation in all areas is consistent with fundamental standards of human rights and their treaty obligations as those that apply to older persons.

(j) ASEM Partners should review the mandates of their national human rights institutions or other similar bodies to ensure that those mandates cover the rights of older persons (and subgroups of older persons) and provide protections against discrimination in older age and ensure that the work of those institutions in those areas is adequately funded; and they consider establishing independent NHRIs or similar independent dedicated mechanism if they do not already exist.
b. Social Protection and the Human Rights of Older Persons

The Concept of Social Protection

The International Labour Organization has described social protection as ‘the set of policies and programmes designed to reduce and prevent poverty and vulnerability across the life cycle’. The concept is firmly based in existing international human rights and labour law, in particular the right to social security and the right to an adequate standard of living, but according to broader understandings it also draws on other human rights including the right to health, equality and non-discrimination.

A former Special Rapporteur of the UN Human Rights Council on extreme poverty, Magdalena Sepúlveda CARMONA, described social protection as ‘encompassing a wide range of policies designed to address the risks and vulnerabilities of individuals and groups, irrespective of whether they can or cannot work’; social protection measures seek ‘to help them cope with, and overcome, situations of poverty, especially when they result from circumstances beyond their control.’ The Special Rapporteur noted that there were two main forms of social protection – social insurance (schemes of support based on contributions) and social assistance (non-contributory forms of support such as unemployment or disability benefits or social pensions including old age pensions).

Another former Special Rapporteur on extreme poverty and human rights, Philip ALSTON, noted in a 2014 report that the main debate at that time about the meaning of social protection had been ‘between those who support what are termed “social safety net” approaches and those who seek “social inclusion” and acknowledged “social citizenship”’. He noted that the safety net approach had been subject to criticism ‘for failing to devote enough attention to structural poverty and inequality, and for its emphasis on the narrow targeting of groups for assistance.’ He also noted that human rights-based approaches had been adopted by the human rights community and also by various development institutions and scholars.

Social Protection and Human Rights Law

The concept of social protection has a solid basis in international human rights law, in particular the right to social security and the right to an adequate standard of living. The rights encompassed by the ‘right to social protections’ are affirmed by Article 25 of the Universal Declaration of Human Rights (right to an adequate standard of living and the right to security in relation to social protection). Articles 9 and 11 of the ICESCR guarantee the right to social security and the right to an adequate standard of living, while Article 12 guarantees the right to the enjoyment of the highest attainable standard of physical and mental health. While the rights do not explicitly identify older persons as beneficiaries, they are just as applicable and relevant to older persons and some are tailored to the specific situations that older persons may be more likely to face.

Other principal United Nations human rights treaties and regional human rights treaties also guarantee some aspects of these rights.

The ICESCR monitoring mechanism, the UN Committee on Economic, Social and Cultural Rights, has referred to these issues in a number of its general comments, in particular its General comment 6 (1995) on the economic, social, and cultural rights of older persons, offering the first detailed interpretation of the specific obligations of States parties to the
International Covenant on Economic, Social and Cultural Rights regarding older persons and their rights. In its General comment No 19 on the right to social security adopted in 2008, the CESCR largely adopted the framework set out in ILO conventions and recommendations on the topic, with specific reference to old age as one branch of social security. In 2010, the Committee on the Elimination of Discrimination against Women adopted General recommendation No 27 on older women and the protection of their human rights.

In Europe, the only treaty provisions that explicitly address older age or the ‘special’ needs or position of older persons are Article 25 of the EU Charter and Article 25 of the Revised European Social Charter. In cases before the European Court of Human Rights, the functioning of health services and social care has been considered by the court, for instance, in relation to the right to life (Article 2) and some procedural guarantees (Article 6).

At the regional level, Article 23 of the Revised European Social Charter explicitly guarantees ‘the right of elderly persons to social protection’. The Social Charter provision is expressed broadly, requiring the State to ensure that older persons remain full members of society and have the resources ‘to lead a decent life and play an active part in public, social and cultural life’ and to enable older persons ‘to choose their life-style freely and to lead independent lives in their familiar surroundings’, though each of these is qualified by the somewhat problematic phrase ‘for as long as possible’. The European Committee on Social Rights has interpreted this provision broadly.

There is no binding regional or subregional instrument in the Asian region that guarantees the right to social protection either generally or in relation to older persons. However, at a subregional level, ASEAN adopted in 2013 the ASEAN Declaration on Strengthening Social Protection under which ASEAN member States committed to building an ASEAN community that is ‘socially responsible and people-oriented’ through establishing nationally defined social protection floors.

### International Labour Standards

In addition to the guarantees in the human rights treaties, the concept of social protection also draws on a body of international labour standards relating to social security. However, the principal reference point for the concept of social protection is a non-binding instrument, ILO Recommendation No 202. This provides guidance to States on how they should go about ‘establish[ing] and maintain[ing] social protection floors as a fundamental element of their national social security systems’ and that they should ‘implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible . . .’.

Article 1(2) of ILO Recommendation No 202 defines social security floors as ‘nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion.’ The Recommendation sets out 18 general principles to be applied by States when implementing social protection, including universality, adequacy and predictability, non-discrimination, gender equality, social inclusion, and respect for the rights and dignity of people covered by social security guarantees.

Social protection guarantees should include at least essential health care services, basic income security for ‘persons in active age who
In addition to the guarantees in the human rights treaties, the concept of social protection also draws on a body of international labour standards relating to social security.

are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability’ and ‘for older persons’.157

Apart from the Social Protection Floors Recommendation, 2012 (No 202) the International Labour Organization has more generally been an important source of binding and non-binding international standards on the right to social security and social protection. The Social Security (Minimum Standards) Convention, 1952 (No 102),158 the Old-Age, Invalidity and Survivors’ Benefits Convention, 1967 (No 128),159 and its accompanying Recommendation No 131, are the most important ILO instruments in this context. They have been described as providing ‘an international reference framework setting out the range and levels of social security benefits that are necessary and adequate for ensuring income maintenance and income security, as well as access to health care in old age.”160 While ILO Recommendations are important sources of policy guidance to Member States of the ILO, they are not legally binding instruments, and the two main conventions in this area have not been widely ratified (59 and 17 ratifications respectively out of 187 members of the ILO as of the end of 2020).

Extent of Enjoyment of the Right to Social Protection: Social Security

The discussion about whether older persons enjoy the right to social protection often focuses only on whether workers who have passed the ‘standard retirement age’ are receiving a pension, whether financed from a contributory scheme, a state-supported scheme or both, and whether any such pension is adequate to maintain a decent standard of living by itself or in combination with other resources to which the person has access. This is of critical importance, though it overlooks the situation of those older persons who are in the paid labour force or who wish to be working but have lost their job, or who cannot obtain paid employment.

Of course, it may not be possible to assess the adequacy of income support for the maintenance of an adequate standard of living purely in numerical terms by reference to some national poverty level (for example whether it reaches a certain percentage of average income). Factors such as housing costs, health care costs and other care and support costs may also have an impact on the sufficiency of the person’s resources. This draws into discussions about social protection the extent of enjoyment of these other rights.

Two general points may be made about the adequacy of coverage of contributory, generally employment-related, pension schemes. First, they are frequently available only or primarily to those employed in the formal economy; workers in the informal economy are frequently not covered by such schemes. As is noted below, a significant percentage of workers in Asia works in the informal sector and therefore ensuring the right to social protection means extending pension coverage to the informal economy.
Secondly, such schemes that are linked to paid work of any sort tend to discriminate against women, who often have interrupted workforce participation, tend to work in the informal economy in Asia, and earn less than men. The result is that fewer women are covered by pension schemes and their entitlements are generally lower, notwithstanding the fact that women generally live longer than men. While many pension systems in Asia and the Pacific reflect these inequalities, in a number of countries efforts have been made to reform pension systems to make them more gender-responsive. Similarly, some developed countries in Europe and Asia have introduced child credits that act as contributions to a pension scheme.

The ILO’s World Social Protection Report 2017-2019 noted that as of 2017, 67.6% of the working age population worldwide were covered under existing laws regulating contributory or non-contributory pension schemes, and 68% of people above retirement age received a pension. However, ‘for many of those who do receive a pension, pension levels are not adequate.’ In the Asia Pacific region, old-age pension coverage has improved significantly, but there are still significant disparities within the region, with some countries providing universal pension coverage while a small number of countries had an effective coverage of less than 6% of the older population.

Recommendations (k) and (l)

(k) ASEM Partners should continue to take all necessary measures to ensure that their systems of social protection (including unemployment benefits, sickness benefits, social security benefits, and pension benefits) are extended to all older persons, including those in the informal sector and those performing unpaid care work, so that they have access to the resources needed for them to enjoy the right to an adequate standard of living and decent conditions of life.

(l) ASEM Partners should take all necessary measures to ensure that women’s patterns of participation in the paid labour force, their representation in the informal economy and their performance of unpaid care work in the community and the family, do not lead to their continued exclusion from or disadvantage in access to forms of social security, including pensions.
Broader Aspects of the Right to Social Protection

At some point, many older persons become dependent on extensive and continuous help from national welfare systems. Different countries have a varied range of more or less extensive public care services for older people. Through home-help services, mobility support services, daytime activities and other social services, many people who want to remain in their homes can do so and live independently for a long period of time. For older persons who are not able to stay in their homes, local, regional, or national public or private services are often responsible for arranging special forms of accommodation and support that includes care and nursing.

At times support provided by other reliable persons may be of great importance for control, dignity, and well-being of an older person. Taking into account the dependency and vulnerability of older persons who lack the ability and means to vindicate their rights, there are reasons to argue for having someone else provide them with support in that regard.

Public services such as social services and health care are most often based on the person’s consent. Increasingly, discussion about improving the quality of life of older persons is focussed on how they can exercise personal choice in these matters.

There is a need to define the policies required to ensure an appropriate quality of life for persons in need of such care. As mentioned earlier in this report, many experts anticipate major challenges in the future in financing the health and medical care system. Because of the growth of the ageing population worldwide, many countries are looking into the matter of the rights and roles of older persons. The concern is that the rising number of older persons means increasing dependency on the social welfare system and therefore increasing costs and responsibilities.

Alarming reports of severely maltreated older people in public or private welfare care that are highlighted from time to time in different countries call attention to the need for increased supervision of care and nursing homes for older persons.

There can be no question that the provision of social protection has a bearing on the enjoyment of a broad spectrum of human rights. When there is an issue of elder abuse, there is likely to an implication for the health of the individual. Similarly, poor living conditions may have significant impact on one’s health. All rights connected to social protection must be considered with a holistic approach for the ultimate well-being of older persons.

While the social protection available to older persons differs in various countries and contexts, there is a common lack of resources and facilities to cope with increasing demands for residential centres, home-care programmes, geriatric services and so on. Meeting these demands will require budget allocations.

Right to Health

Article 12 of the ICESCR guarantees the right to the enjoyment of the highest attainable standard of physical and mental health. This applies to all persons, including older persons. Other international human rights conventions reinforce and supplement this general statement of the right: for example, Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, and Article 25 (b) of the Convention on the Rights of Persons with Disabilities, which explicitly mention older persons.
In interpreting Article 12 of the ICESCR, the UN Committee on Economic, Social and Cultural Rights has reaffirmed the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment, based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.167

Other rights can also be relied on to support some dimensions of the right to health. This has often been necessary because it has not been possible to complain directly to an international court or other body about violation of the right to health. Sometimes a civil and political right will guarantee one aspect of the right to health, for example, Article 7 of the ICCPR and Article 3 of the European Convention on Human Rights both guarantee that no one shall be subjected to torture or to cruel, inhuman or degrading treatment, and specifically guarantee that a person shall not be subject to medical or scientific experimentation without free consent.

The European Committee on Social Rights has also had the opportunity to interpret and apply the right to health under Article 11 of the European Social Charter in its reporting procedure and its adjudication of a number of collective complaints, although it does not appear to have addressed in a focused way issues of discrimination against older persons under this article.168

The European Court of Human Rights has held that in certain circumstances, denial of or failure to provide access to medical care or limited access to medications constitute violations of Article 2 ECHR. The court takes into consideration, however, the fact that the level of guaranteed medical care, including the accessibility of refunded medicaments, depends on the financial capacity of the state.169 Other rights also offer the opportunity to protect some elements of the right to health within the civil and political rights framework. One commentator has suggested that the ECtHR ‘has etched out a small space within the Convention for such a right, at least in certain circumstances, whilst setting up fertile ground for further development.’170 The ECtHR has drawn in particular on Article 2 (the right to life) and Article 8 (right to private life) in this context.

Dimensions of the Right to Health: The Right to Health Care

From the human rights documents, it can further be interpreted that older persons should benefit from family and community care and protection in accordance with each society’s system of cultural values. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental, and emotional well-being and to prevent or delay the onset of illness. They should also have access to social and legal services to enhance their autonomy, protection, and care. Older persons should be able to utilise appropriate levels of institutional care providing protection, rehabilitation, and social and mental stimulation in a humane and secure environment. Further, they should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care, or treatment facility, including full respect for their dignity, beliefs, needs, and privacy and for the right to make decisions about their care and the quality of their lives.171

The extent of the responsibilities of States in relation to the right to health were articulated in a report prepared by the UN as part of the Follow-up to the Second World Assembly on...
Ageing. The report noted that there is a positive obligation for the States to invest in research and to take positive measures. “The health sector is central to the situation of older persons. Government responses have focused on various issues, including subsidies for medicines, user fee exemptions, health insurance schemes, special services, including geriatrics-specific departments, focused attention on certain chronic diseases, training of personnel, and research and policies to address mental health issues, notably dementia and, specifically, Alzheimer’s disease.”

The report also emphasises that there is a need for affordable healthcare and care on equal terms. “Some national health policies have been adjusted to address the increasing level of chronic diseases that affect older persons disproportionately. Some countries have taken steps to ensure that every person older than 65 is entitled to a free medical check-up on a regular basis, including diagnosis of and treatment of chronic diseases. In-house services as well as itinerant services are reportedly available in urban and rural centres. A few governments have also established national health funds, handing out health cards to claim reduced costs for medication, while others have developed mechanisms to ensure adequate consent for services and treatment by older patients.”

The report also emphasises affordable healthcare. “Older persons tend to approach health-care centres at advanced stages of an illness. This is often the result of lack of access to health care, including the distance and cost of travelling to a facility, especially in rural areas where infrastructure is underdeveloped, distances are vast and transportation is problematic; and overcrowding of primary health centres.”

Palliative Care

There are no explicit provisions in the general human rights treaties that guarantee the right to palliative health. The argument has been made that the right can be derived from the right to health; it has also been argued that a denial of palliative care might amount to cruel, inhuman or degrading treatment contrary to Article 7 of the ICCPR, the Convention against Torture and other international and regional treaties. The Committee on Economic, Social and Cultural Rights has referred briefly to palliative care in a number of its general comments.

The submissions provided to the OEWGA have shown that while the position varies considerably, there were frequently ‘deficiencies in ensuring access to such services for all without discrimination.’ The limitations included:

‘...a lack of legislative or policy frameworks, failure to integrate palliative care services into existing health policy and insurance systems, insufficient funding and resources generally and within public health systems in particular, an insufficient number of trained physicians and other health professionals to provide palliative care services, restriction of palliative care services to a limited number of diseases while not including others that were appropriate for palliative care services, inadequate access to medicines required for pain relief, unequal access to palliative care services on the basis of economic status, residence in a rural area or on other bases.’

Any shortcomings of States’ palliative care policy need to be addressed. A deficient palliative care policy creates the risk that older people undergo unnecessary hospitalisations and admissions.
to intensive care, sometimes against their will. In other cases, there is a risk of palliative care being decided on at an unsuitable stage on the mere basis of the person’s age. Furthermore, when it comes to palliative care, WHO underlined how pain levels experienced by older persons are consistently underestimated. It is particularly critical for persons with dementia, where there is a widespread failure to inform and involve patients in decision-making, and for other people living in residential homes, where access to specialist services may be limited.

The Right to Home, Housing and Care and Support

The right of a person to decide where and with whom they live, and to have access to a reasonable range of affordable housing options and the necessary resources, is based on a combination of international human rights, in particular the right to respect for one’s private life, family life and home (variously expressed in Article 17 of the ICCPR and Article 8 of the European Convention on Human Rights and cognate treaties) and the right to adequate housing derived from the right to an adequate standard of living in Article 11 of the ICESCR.179 Of potential importance to some older persons is the guarantee in Article 19 of the Convention on the Rights of Persons with Disabilities, which guarantees the right of older persons with disabilities to live independently and to being included in the community.

The UN Committee on Economic, Social and Cultural Rights has emphasised the entitlements of older persons with regard to the right to an adequate standard of living (Article 11). This article articulates the right to have basic human needs met, such as the right to food, water, shelter, and clothing. A similar standard is set out in the United Nations Principles for Older Persons, principle 1, which also included ‘health care through the provision of income, family and community support and self-help’.

Recommendations 19 to 24 of the Vienna International Plan of Action on Ageing emphasise that housing for older persons must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account. Accordingly, national policies should help older persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them (recommendation 19). Recommendation 20 stresses the need for urban rebuilding and development planning, and laws to pay special attention to the problems of the ageing, assisting in securing their social integration, while recommendation 22 draws attention to the need to take account of the functional capacity of the elderly in order to provide them with a better living environment and facilitate mobility and communication through the provision of adequate means of transport.

(Long-term) Care and Support

The issue of how and where older persons should be able to access the different forms of care and support that they need to conduct their everyday lives independently is an important one, particularly as it affects the provision of institutional care for older persons who need high levels of support. Given the horrifying numbers of older persons who have died in congregate care settings – care homes, long-term care (LTC) or aged care facilities – the human rights implications of such arrangements, already problematic, have become even more pressing and indeed have been a matter of life and often death for residents in those care homes. There is serious examination to be undertaken as to whether such large-scale
institutional provision of care and support are consistent with human rights. It is striking that in the case of persons with disabilities, generally the case for deinstitutionalisation has prevailed and the rights in the CPRD (including Article 19) have been an important support for those moves. Yet, given that a significant proportion of older persons living in congregate care settings are persons with disabilities, it is striking that these issues have not been more fully explored in relation to older persons.

The issue of long-term care (generally taken to involve institutional care) needs to be considered in the broader context of what care (not always long-term) and support needs to be provided to older persons wherever they live in order that they may continue living where they wish and to do the things that they want to do. The focus should be on supporting persons in exercising their autonomy and for most persons that means supporting them to live in their own home or with family.

Nonetheless, it is a reality that many older persons must face increasing frailty as a natural consequence of the ageing process. This process sometimes occurs together with cognitive impairments. This creates need for assistance with daily tasks, preferably in our own homes, with family, though sometimes that becomes difficult or impossible and the institutional option appears to be the best (or indeed only real) option.

However, even if we are prepared to accept that some form of congregate care institutional setting is an appropriate option for some people (a proposition currently under challenge in some countries), long-term care needs a human rights approach. The European Network of National Human Rights Institutions (ENNHRI) conducted a project on the human rights of older persons in long-term care from 2015 to 2017. The report published in June 2017 includes the findings of the monitoring work carried out by six of its member institutions (the National Human Rights Institutions in Belgium, Croatia, Germany, Hungary, Lithuania, and Romania). The report shows that, in spite of good practices and the hard work and dedication of many care workers, human rights concerns were found in care homes in all six countries, notably due to a lack of resources and the failure to use a human rights-based approach in the design and delivery of long-term care.

Long-term care is not limited to residential settings and persons requiring it should be offered the possibility to choose their living arrangements, with adequate supports. Of particular relevance in this respect is the United Nations Convention on the Rights of Persons with Disabilities (CRPD), ratified by 45 of the 47 member states of the Council of Europe and by the EU. In addition to its Article 25 on health which acknowledges the needs of older persons, the CRPD also provides for the right to live independently and to be included in the community in its Article 19. This right, along with dignity and self-determination, provide guiding principles for the design of long-term care services, including in residential settings, where the majority of care recipients are estimated to have a form of disability.

**Recommendation (m)**

(m) ASEM Partners should review their national systems for the provision of care and support to older persons, both those living in their own homes and those living in care homes, including assessing whether these arrangements are consistent with existing human rights treaty obligations.
Elder Abuse, Health and Social Protection

It is recognised that some older persons are highly vulnerable to abuse, including in the home, in the community and in long-term care. The World Health Organization (WHO) has estimated that at least 4 million older persons experience elder abuse182 in the European region every year. In a case concerning a geriatric nurse who was dismissed for having brought a criminal case against her employer alleging deficiencies in the care provided,183 the European Court of Human Rights recognised this problem, stating that “in societies with an ever growing part of their elderly population being subject to institutional care, and taking into account the particular vulnerability of the patients concerned, who often may not be in a position to draw attention to shortcomings in the provision of care on their own initiative, the dissemination of information about the quality or deficiencies of such care is of vital importance with a view to preventing abuse”.

Further, Article 16 (2) of the Convention on the Rights of Persons with Disabilities requires ‘age-sensitive’ assistance and support for persons with disabilities and their families to prevent exploitation, violence, and abuse, thereby recognising the situations where older persons are vulnerable.

However, as ‘dignity’ has such a central role within the human rights regime, neglect and abuse have naturally fallen within the wide scope of civil and political rights of the European Convention, namely the prohibition on inhuman or degrading treatment (Article 3) or the right to privacy (Article 8).

Violations of the prohibition of inhuman or degrading treatment due to older age have not been expressly raised before any of the regional European courts. However, there are decisions from the ECHR in cases concerning the rights of the members of groups the Court categorises as “vulnerable” (for example, children or persons with disabilities). One can therefore argue that the same doctrine would apply to older persons. The court’s jurisprudence would then indicate that Member States must act with due diligence in carrying out their positive obligation to prevent violations of physical and mental integrity by both public and private actors against older persons. However, since there may be an infinite variety of ways of violating a person’s dignity, the court has stated that each violation must be examined on a case-by-case basis.

While the cases involving violence against older persons are few, the problem is tangible outside the courtroom. Thus, the need for an improvement in the protection of older persons from abuse and neglect is common for all European countries and most urgent. Nevertheless, if one is optimistic, one can conclude there are some positive trends in the narrow case law from the ECHR. Essentially, it acknowledges violence towards vulnerable groups, both from institutions and from private actors, as a human rights priority. In addition, the issues of neglect and abuse are highly interlinked with other issues regarding the dignity of older persons, such as autonomy and independence and various forms of care of older persons.

Stigma and Discrimination in Times of a Pandemic

The recognition of the vulnerability of certain people can lead to a strengthening of the protection of the specific group and has historically done so. However, recognition may also risk stigmatising the group in question and therefore allow a paternalistic approach. Every person has their own needs and is the bearer of rights inherently, irrespective of age or health. Even during a time when the COVID-19 virus has
been challenging the communities in the world, it cannot permit us to challenge these principles.

At the time of writing, horrifying numbers of fatalities of older persons due to COVID-19 have been reported globally. The disproportionate number of deaths in certain countries and regions compared to others triggers questions of access to medical care. As the Madrid International Plan of Action on Ageing has previously recognised, older persons can experience age-based discrimination in the provision of services when their treatment is perceived to have less worth than the treatment of younger persons. However, there is universal consensus that no life is expendable. Since we know that a case of COVID-19 may end one’s life, the denial of health care is a violation of the right to life as is the allocation of acute health care services purely on the basis of age. For instance, the ECtHR repeatedly has decided in cases connected with the functioning of health services and social care in the context of violations of the right to life (Article 2.)

c. Age Discrimination against Older Persons focusing on Labour Markets

Older Persons and Work

Older persons engage in work for the same reasons as most other persons, including a desire to ensure or contribute to an adequate income for oneself and one’s family, out of a desire for self-fulfilment, or a desire to continue to participate actively in economic life, and to enjoy the other benefits that work can bring. At the same time, some older persons who are working might prefer not to be doing so but may not be able to make that choice for financial or other reasons. Stopping paid work may not be possible because the person does not have adequate individual or family assets, savings, or access to a private or public pension that will permit the maintenance of a decent standard of living in retirement. For those with no accumulated resources, there may be no, or no adequate, government-funded age pension or other forms of social support. Experience has shown that the availability and adequacy of a government-funded pension can be a critical factor in the decision of many older persons to withdraw from paid labour force participation.

Conversely, there are many older workers who are frustrated because they cannot obtain work that they want for financial or other reasons, or whose opportunities for development and promotion in existing employment are limited because of their age. Mandatory retirement ages are one clear form of age-based distinction in employment, but many others are to be found in ageist attitudes and practices embodied in laws, the provisions of collective agreements, individual contracts, and corporate and workplace cultures. The limitation of opportunities on the basis of age and ageist stereotypes begins relatively early in many workforces, with people in their forties in some countries reporting that they have been disadvantaged because of their age.

The extent and nature of older persons’ participation in the paid labour market is influenced by many factors, including the structure of the labour market, the changing nature of work, demand for labour in a given economy, the skills required, the availability of training or retraining for older works, the adequacy of retirement support from private or public sources or both, and the other unpaid care and domestic work that older persons, particularly women, undertake in the family or in the community.

Another important influence has been the response of many governments to the ageing
of their populations and concerns about the percentage of the population who are ‘not economically productive’ because they are no longer in the paid labour force, undermining the ability of the state to provide the services expected of it by its citizens. Many governments have responded to population ageing by encouraging people to work for longer, whether full-time or part-time. This has often involved raising the ‘retirement age’, generally correlated in people’s minds with the age at which one becomes eligible for any state-fund pension. Ironically, some of these retirement ages were set quite low in order to ensure, particularly in the public sector, that there was a pipeline of employees of all ages, so that younger employees get opportunities and can come up through the system. Now, however, older persons are often encouraged to work for longer, but may have difficulty in finding suitable employment and, if they cannot find paid work, may be only entitled to social support that is inadequate.

Work: Formal, Informal, Unremunerated and Unrecognised

The concept of ‘work’ and ‘access to the labour market’ that forms the focus of many discussions about work-related rights and is the primary focus of the binding international and regional human rights, is that of work in the formal economy, in the paid labour force. As a general matter, that privileges particular forms of social activity (paid work) and fails not only to remunerate but also to recognise other forms of labour, in particular unpaid care work and domestic work, still largely performed by women. Older persons also engage in a significant amount of such work, as well as providing other economically valuable but not economically valued work in the form of volunteering.

Furthermore, a focus on the formal economy tends to neglect the large amount of economic activity that takes place in the informal economy, an area of particular importance in developing countries. According to the ILO, more than 61% of the world’s employed population aged 15 or over (or two billion people) work in the informal economy. The ILO describes the ‘informal economy’ in these terms:

“The term ‘informal economy’ refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that,
although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.”

The proportions of different sections of the community who work in the informal economy vary according to region and within regions, level of development of the country, sector, gender, age, education, among other factors. Africa has the highest percentage of workers in the informal economy (85.8%), while for Asia and the Pacific it is 68.3% and for Europe and Central Asia 25.1%. Much informal work takes place in agriculture and persons living in rural areas are almost twice as likely to be engaged in informal work as those living in urban areas.

Both younger workers (77.1%) and older workers (77.9% for people aged over 65) have higher levels of informal employment than other age groups. In the Asia Pacific region, 59.2% of the employed population engages in non-agricultural informal employment. Within the region, Southern Asia and South-eastern Asia and the Pacific have higher shares of informal employment, with 87.8% and 75.2% respectively when including agriculture, and 77.6% and 63.9% excluding agriculture. The varying levels of development of countries in the Asia and Pacific region are reflected in the different levels of the informally employed. They range from over 90% in Nepal, Lao PDR, and Cambodia to a low of below 20% in Japan, with an overall average of 71.4% in developing and emerging economies and 21.7% in developed economies. These differences have implications for policy priorities and the nature of legislative and policy reform needed to effectively ensure the enjoyment by older persons of their human rights in the field of work.

In the Europe and Central Asian region, figures are significantly lower, with the lowest figures in Northern, Southern and Central Europe, followed by higher figures in Eastern Europe and higher figures still in Central and Western Asia.

The disadvantages of working in the informal economy are many. As ILO Recommendation No 204, The Transition from the Informal to the Formal Economy acknowledges, ‘most people enter the informal economy not by choice but as a consequence of a lack of opportunities in the formal economy and in the absence of other means of livelihood’ and that ‘decent work deficits – the denial of rights at work, the absence of sufficient opportunities for quality employment, inadequate social protection and the absence of social dialogue – are most pronounced in the informal economy.’ The ILO has identified a rights deficit, a social protection deficit, and a representational deficit in the informal economy; Recommendation 204 represents a framework for trying to move workers from the informal economy to the formal economy as far as possible.

International Human Rights Related to Work

International human rights and labour law has long guaranteed the right of persons to have access to work. Articles 23 and 24 of the Universal Declaration of Human Rights affirms the right to work, to just and fair conditions of employment, and to organise in support of labour rights. Article 6 (1) of the ICESCR guarantees ‘the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’. Article 6(2) obliges State parties to take measures to support the realisation of this right by, among other things, providing technical and vocational training programmes.
Article 7 of the ICECSR guarantees the ‘right to just and favourable conditions of work’: this includes fair wages and equal remuneration for work of equal value, safe and healthy working conditions, equal opportunities for promotion, and the right to rest, leisure, and reasonable limitation of working hours. Article 8 of the ICECSR also guarantees certain rights related to freedom of association, participation in trade unions, and the right to engage in collective bargaining.

In addition to the specific guarantees of equality for women workers, everyone is entitled to enjoy the rights guaranteed by Articles 6 and 7 without discrimination. Article 2(2) of the Covenant obliges States parties to guarantee that the rights will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.’

At the regional level, elements of the right to work are protected under the Revised European Social Charter (Articles 1-6, 9-10 and 24-29) and under the EU Charter of Fundamental Rights (Articles 15, 27-31). In each case the general guarantees of equality in those instruments would include the right to enjoy those rights without discrimination on the basis of age, whether age is explicitly stated or because it is understood as falling within the guarantee of non-discrimination on the ground of ‘other status’. The EU Employment Equality Directive referred to earlier prohibits direct and indirect discrimination in employment on grounds that include age, as well as other discriminatory acts. However, it also provides for exceptions in the case of age discrimination, in particular in relation to mandatory retirement ages. 193

The non-binding ASEAN Human Rights Declaration affirms the economic, social, and cultural rights in the Universal Declaration of Human Rights. Article 27 of the ASEAN Declaration includes ‘the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work, and to have access to assistance schemes for the unemployed’, as well as trade union rights. The Declaration also guarantees protection for children and young persons against economic and social exploitation.

Article 18 of the Inter-American Convention on Protecting the Human Rights of Older persons and Article 6 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa also guarantee the right to work of older persons.

Thus, while there is explicit coverage of older workers in a number of binding regional instruments in Europe, there is no such coverage in the Asian region, and one has to fall back on the guarantees of the ICESCR and its guarantees of non-discrimination on the ground of ‘other status’.

International Labour Standards

The International Labour Organization has adopted a number of binding and non-binding instruments guaranteeing the right to work without discrimination. Two ILO conventions provide protection against discrimination in employment and occupation and in the termination of employment: 194 Other ILO conventions of general application would also apply to older workers, 195 as would the various ILO conventions relating to social security and social support.
The Discrimination (Employment and Occupation) Convention and Recommendation, 1958\textsuperscript{196} does not explicitly include age among the prohibited grounds of discrimination, although it is open to States parties to include that in grounds for impermissible discrimination at the national level and some States have done this.

The Termination of Employment Convention, 1982 (No 158)\textsuperscript{197} stipulates a number of grounds as invalid reasons for terminating a person’s employment. The list includes ‘race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin’, temporary absence due to illness or injury, various union-related activities and ‘absence from work during maternity leave’.\textsuperscript{198} Once again, it makes no explicit reference to age as an impermissible ground for termination of employment. However, Article 4 of ILO Convention No 158 provides that a person’s employment may not be terminated ‘unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.’ This may provide some protection for workers being dismissed on the basis of age.

The main instrument adopted by the ILO that addresses older workers is the non-binding recommendation, the Older Workers Recommendation, 1980 (ILO Recommendation No 162). ‘Older workers’ in the ILO context generally refers to persons who are aged 50 or over. The instrument recommends that older workers should, without discrimination based on their age, enjoy access to all the benefits of employment, including access to promotion, training, conditions of work, social security, housing, and other employment related benefits provided to other workers.

The ILO has also adopted other non-binding instruments that address the informal economy explicitly, in particular the non-binding \textit{Transition from the Informal to the Formal Economy Recommendation}, 2015 (ILO Recommendation No 204). Many other obligations under other ILO conventions apply to workers in the informal economy even if those instruments do not expressly refer to workers in that part of the economy.\textsuperscript{199}

\textbf{Recommendation (n)}

(n) ASEM Partners should ensure that older persons and their organisations are fully involved in the planning and implementation of economic and social recovery strategies for exiting from or living with COVID-19, and more generally in the preparation for and execution of disaster response and recovery strategies.

(o) ASEM Partners should ensure that policymaking with respect to, or that affects, older persons is informed by evidence-based knowledge.
d. Empowerment of Older Persons through Education, Training, Lifelong Learning and Capacity Building

The right to education is a fundamental social and economic right. Affirmed by Article 26 of the Universal Declaration of Human Rights 1948, it is guaranteed by Article 13 of the International Covenant on Economic, Social and Cultural Rights, as well as affirmed by regional treaties and many non-binding instruments and policy documents. The right is a broad one: it includes but is not limited to formal primary, secondary, and tertiary education. Its purposes go beyond the narrowly instrumental one of equipping individuals with the skills to work and include both the goal of educating individuals to be informed and engaged citizens and members of their communities, and to the development of their own potential to the fullest. As the ICESCR puts it in Article 13 (1):

“…education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace.”

Article 13 does not itself refer to the concept of lifelong learning, though it does guarantee the right of persons who have missed out on the opportunity to acquire basic education to acquire that at a later stage in life (ICESCR, art (13(2)(d). There is no explicit guarantee against discrimination on the basis of older age in the ICESCR, and one has to draw on the category of ‘other status’ in Article 2(2) of the ICESCR to source the right to equal enjoyment of that right notwithstanding a person’s older age. In practice, though, much of the focus of efforts on implementing the right to education has been on younger sections of the population, with the goal of preparing them for their adult lives as workers and members of their communities.

The only explicit mention of ‘lifelong learning’ in one of the principal UN human rights treaties appears in Article 24(5) of the Convention on the Rights of Persons with Disabilities. This requires States parties to ensure that persons with disabilities are able to access ‘general tertiary education, vocational training, adult education and lifelong learning’ without discrimination.

The concept of adult education and lifelong learning has been given more detailed content by the activities and instruments of UNESCO, as well as in ILO instruments. The concept of lifelong learning goes beyond vocational and technical education at various stages of life. These are primarily focused on ensuring a person’s ability to participate in the labour market and are certainly important for older workers who wish to remain in work or who wish to re-join the paid labour force. But life-long learning is broader and contributes to the goals of individual fulfilment that is a core part of the right to education:

“Life-long learning needs to be understood as the provision or use of both formal and informal learning opportunities throughout people’s lives in order to foster the continuous development and improvement of the knowledge and skills needed for employment and personal fulfilment. The concept of life-long learning recognises that learning is not confined to childhood or the classroom but takes place throughout life and in a range of situations.”
A more expansive formulation has been offered by UNESCO:

“Although lifelong learning is a very broad concept, it is generally understood in a limited way, and often as interchangeable with narrower terms such as adult education, elder education, continuing education or skills for work. A fuller understanding of the concept of lifelong learning emphasizes that learning is lifelong and life-wide, from birth to death (any time) and exists in and out of the education system (anywhere). Learning is undertaken by people of all ages (anyone), takes place through a range of modalities, including face to face, at distance and, increasingly, online, and concerns all domains of knowledge (anything).”

The concept is endorsed in the Madrid International Plan of Action on Ageing 2002, which sets as a goal the provision of opportunities for individual development, self-fulfilment and well-being throughout life as well as in late life through, for example, access to lifelong learning and participation in the community while recognising that older persons are not one homogenous group. Sustainable Development Goal 4 commits member States to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’.

It is clear therefore that the concept of adult education or lifelong learning applies over many decades of a person’s lifespan, from the end of the person’s youth and basic education to the later stages of their life. The important question here is the extent to which the notion has been developed and implemented at the international and national levels in relation to older persons. As noted above, defining who is older is a difficult and fluid exercise. It would certainly include persons who are in the later stages of their workforce participation as well as those who have left the paid labour force – that would certainly include those classified as older persons at the age of 60 or even earlier where pension or retirement ages are set lower.

Even though lifelong learning applies to persons of all ages, its application in relation to older persons has been patchy. For example, in the context of SDG4, the Independent Expert on the human rights of older persons has noted that while the Goal refers to lifelong learning for all, it is not accompanied by ‘targets and indicators that can effectively improve opportunities for lifelong learning’, with the actions envisaged ‘clearly targeted towards children, youth, women and persons with disabilities’; none of the targets or indicators specifically mention older persons, although they do mention other groups.

Recommendation (p)

(p) ASEM Partners should review existing adult education, including technical and vocational training and other lifelong learning initiatives, to ensure that these are in practice available to older persons, including those in the paid labour force or those who wish to enter or re-enter the paid labour force; and also to ensure that lifelong learning initiatives include access to opportunities for older persons to improve their digital literacy and to learn other skills relating to their life transition as well as for the continuing enrichment of their lives.
V. OTHER MATTERS

a. Data Gaps

Although a significant amount of statistical and other data is available about the situation of older persons, in many instances data or disaggregated data about specific subgroups of older persons is not available. The former Independent Expert on the human rights of older persons, Rosa KORNFIELD-MATTE has drawn attention to these issues, in particular in her 2020 thematic report to the Human Rights Council. She noted:

“To date, there is a serious gap in the data available to capture the lived realities of older persons and the enjoyment of their human rights. Inequalities faced by older persons therefore often remain invisible. The exclusion of older persons from surveys and national censuses affects the ability to understand the extent to which they are able to participate in society and enjoy their human rights on an equal basis with others. This lack of significant data and information on older persons is, in itself, an alarming sign of exclusion and renders meaningful policymaking and normative action practically impossible.”

The current United Nations Independent Expert on the human rights of older persons has also noted that the COVID-19 crisis ‘had revealed important gaps in the availability of age-specific data.’ The United Nations Secretary-General also drew attention to these data deficiencies in his Policy Brief on COVID-19 and older persons, noting that the invisibility of older persons in public data analysis’ and the need for ‘[i]nnovative approaches, backed by evidence and data disaggregated by age, but also sex and relevant socio-economic characteristics . . . essential to effective public policy making that is inclusive of older persons.’

Recommendation (q)

(q) ASEM Partners should (continue to) work collaboratively with international and national bodies to improve the quality and coverage of statistics and data relating to older persons to ensure that high-quality disaggregated data is available for all aspects of policymaking in relation to older persons.
ASEM Partners

All ASEM Partners should:

(a) Identify and adopt appropriate legal, administrative, educational, and other measures to address the existence and effects of ageism in their societies, taking into account the intersection of age with other characteristics such as sex, race, gender, disability, and other statuses,

(b) Review their position on the desirability of a new United Nations convention on human rights in older age, consulting closely with national human rights institutions, and organisations of older persons, experts, and other interested parties at the national level,

(c) Engage or continue to engage substantively and constructively with the work of the United Nations General Assembly Open-ended Working Group on Ageing, including supporting the adoption of recommendations or other agreed clearly conclusions at the next session of the OEWGA in April 2021,

(d) Consistently raise issues relating to equality and non-discrimination in relation to older age in the Universal Periodic Review (UPR) and ensure that specific and detailed material about the situation of older persons in their diversity is included in their reports under United Nations human rights treaties, relevant regional human rights treaties or other processes and applicable ILO instruments,

(e) Review the extent to which they have included disaggregated data relating to older persons (including in age cohorts above 65 and disaggregated according to sex, race, socio-economic status, gender, disability, and other relevant factors) in their reports of progress in implementing the Sustainable Development Goals and take appropriate steps to ensure that such data is included under all relevant Goals, targets, and indicators, supplementing the existing targets and indicators if necessary,

(f) Consider ratifying those principal UN human rights treaties and optional protocols and regional human rights treaties that they have not yet ratified or acceded to and accept procedures providing for the receipt of individual or collective complaints or communications relating to alleged serious or systematic violations of human rights,

(g) Strengthen existing regional or subregional human rights frameworks, institutions, and procedures, including through the adoption of legally binding instruments and complaint procedures where these do not already exist or are not sufficiently comprehensive in coverage or are ineffective in providing adequate remedies to older persons,

(h) Ensure that human rights monitoring bodies at the international, regional, and subregional levels have sufficient resources to effectively carry out their mandates,

(i) Review their current legislation to ensure that there is explicit constitutional and/or legislative protection against discrimination on the basis of older age (including in conjunction with sex, race, gender identity, migration status and other relevant characteristics) and that legislation in all areas is consistent with fundamental standards of human rights and their treaty obligations as those apply to older persons; this includes labour and employment legislation, criminal and other laws relating to elder abuse, social security, social insurance and pension laws, laws relating to the exercise of legal capacity (eg guardianship laws), health legislation, housing laws legislation regulating long-term care and other laws,

(j) Review the mandates of their national human rights institutions or other similar
bodies to ensure that those mandates cover the rights of older persons (and subgroups of older persons) and provide protections against discrimination in older age and ensure that the work of those institutions in those areas is adequately funded; and they consider establishing independent NHRI or similar independent dedicated mechanism if they do not already exist,

(k) Take all necessary measures to ensure that their systems of social protection (including unemployment benefits, sickness benefits, social security benefits and pension benefits) are extended to all older persons, including those in the informal sector and those performing unpaid care work, so that they have access to the resources needed for them to enjoy the right to an adequate standard of living and decent conditions of life,

(l) Take all necessary measures to ensure that women’s patterns of participation in the paid labour force, their representation in the informal economy and their performance of unpaid care work in the community and the family, do not lead to the continued exclusion from or disadvantage in access to forms of social security including pensions,

(m) Review their national systems for the provision of care and support to older persons, both those living in their own homes and those living in care homes, including assessing whether these arrangements are consistent with existing human rights treaty obligations,

(n) Ensure that older persons and their organisations are fully involved in the planning and implementation of economic and social recovery strategies for exiting from or living with COVID-19, and more generally in the preparation for and execution of disaster response and recovery strategies,

(o) Ensure that policymaking with respect to, or that affects, older persons is informed by evidence-based knowledge,

(p) Review existing adult education, including technical and vocational training and other lifelong learning initiatives to ensure that these are in practice available to older persons, including those in the paid labour force or those who wish to enter or re-enter the paid labour force; and also to ensure that lifelong learning initiatives include access to opportunities for older persons to improve their digital literacy and to learn other skills relating to their life transition as well as for the continuing enrichment of their lives, and

(q) Work collaboratively with international and national bodies to improve the quality and coverage of statistics and data relating to older persons to ensure that high-quality disaggregated data is available for all aspects of policymaking in relation to older persons.

Civil Society Organisations

Civil society organisations should:

(r) Apply a rights-based approach to their work with older persons and on ageing, by building older persons’ understanding of their human rights, supporting them to claim those rights, and working with authorities and service providers to ensure that laws, policies, practices, and services uphold older persons’ rights, dignity and autonomy and ensure their full participation in society,

(s) Build relationships and work together with national human rights institutions to ensure the rights of older persons are better addressed,

(t) Accredit their organisation to the UN Open-ended Working Group on Ageing to ensure older persons and their civil society organisations inform and participate in its work and outcomes of the OEWGA,

(u) Engage with their national governments and recommend that they support the elaboration of a new United Nations convention on the human rights of older persons.
National Human Rights Institutions and their Regional Networks

The Global Alliance of National Human Rights Institutions (GANHRI) and the regional networks of NHRIs should:

(v) Promote comparative research on the extent to which the rights of older persons are formally included in the mandates of NHRIs, the nature of their work on those issues, and areas where that work might be enhanced; and

(w) Together with individual NHRIs continue to engage actively with the UN Open-ended Working Group on Ageing and to contribute the experience of NHRIs to its work.

Other Stakeholders

Universities and other research institutions should:

In collaboration with other partners and stakeholders, especially in the Asian region, consider establishing new networks such as the European Law and Ageing Network or building on existing networks on research into ageing and human rights and related issues, to advance research and policy analysis on the human rights of older persons; and

Encourage and support the conducting of research into elder law, ageing issues from a human rights perspective, and cross-disciplinary research in this field, with an emphasis on research in the design and conduct of which older persons and their organisations are closely involved.

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The United Nations notes the prevalence of the use of a model of age-based accounting flows in order to predict the impact of ageing populations: 12. ... Such a model describes a flow of resources over time and across generations and assumes that individuals experience long periods of dependency at the beginning and the end of their lives, in which they rely on resources produced by the labour of the working age adults. In this model, older persons are categorized as dependent, with the assumption that all people of the chronological age of 60–65 years and older consume more resources than they generate through their own labour. 13. ... Population ageing, it is argued, will irrevocably increase expenditures on health, social protection and long-term care schemes, while reducing the number of working age adults. Such analyses, however, are rooted on a fixed image of what old age looks like, as well as on assumptions based on current labour force participation rates. United Nations, Follow-up to the International Year of Older Persons: Second World Assembly on Ageing, Report of the Secretary-General, UN Doc A/75/128, paras 12-23 (2020).

Vegard Skirbekk, Ursula M Staudinger and Joel E Cohen, ‘How to Measure Population Ageing? The Answer Is Less than Obvious: A Review’ (2019) 65(2) Gerontology 136-144. These authors distinguish between measures based on current chronological age structure and those that involve use of remaining life expectancy (RLE) based on period life tables. The former involve measurement according to ‘the proportion of the population below a given chronological age or above a threshold considered ‘old’ or ratios of these measures’ and determine ‘the onset of old age by the relative position (e.g., among the top 15% in age distribution (i.e., relative age) instead of a cutoff age.’ (id at 137). The latter type of measures ‘calculate how many years the average person of a given chronological age has left to live’; countries with higher life expectancies would have a smaller fraction of people with RLE below 10 or 15 years than than the fraction of people with chronological age above 60 or 65 years.’ A long-lived population would thus be relatively young even though it would be ‘older’ if the simple chronological age threshold were used. (id at 137). The usefulness of the different measures depend on the purpose for which the age of a person or overall population ageing is being considered.

Skirbekk et al (above n 13, 136) write: Usually, population ageing is measured to inform fiscal and social planning because it is considered to indicate the burden that an elderly population presents to the economic, social security, and health systems of a society. Measures of population aging are expected to indicate shifts in the distribution of individuals’ attributes (e.g., chronological age, health) within a population that are relevant to assessing the burden. We claim that chronological age – even though it is the attribute most broadly used – may frequently not be the best measure to satisfy this purpose. A distribution of chronological age per se does not present a burden. Rather, burdens arise from the characteristics that supposedly or actually accompany chronological age. We posit that in addition to chronological age, meaningful measures of population aging should reflect, for instance, the distribution of economic productivity, health, functional capacities, or biological age, as these attributes may more directly assess the burden on the socioeconomic and health systems.’


See generally Maya Sabatello, ‘A Short History of the International Disability Rights Movement’ in Maya Sabatello and Marianne Schulze (eds), Human Rights and Disability Advocacy (University of Pennsylvania, 2014) 1.


See, for example, the Revised Social Charter 1966 of the Council of Europe, art 23; Charter of Fundamental Rights of the European Union, art 25.

UN General Assembly resolution 50/141, para 14.

UN General Assembly resolution 46/91 of 16 December 1991.


There are various concepts of ageism, a number of which include all forms of treatment based on assumptions about a person’s age, whether young or old. We focus on this phenomenon in relation to persons who are in the later stages of their lives, although some scholars have noted the danger that focusing only of older age ageism may create an ‘us-them’ perspective that reinforces marginalization of older persons: Frederik Snellman, ‘Whose ageism? The reification and definitions of an elusive concept’ (2016) 68 Nordic Psychology 148-159.


All but five of the ASEM Partner Countries (Brunei Darussalam, China, Malaysia, Myanmar and Singapore) are parties to the ICCPR. China has

International Labour Organization, Older Workers Recommendation, 1980 (Recommendation 162).

United Nations Department of Economic and Social Affairs, above n 38; Fraser et al, above n 41.


Royal Commission into Aged Care Quality and Safety (Australia), Aged Care and COVID-19: a special report, 1 October 2020.


For example, the US Age Discrimination in Employment Act uses the threshold of 40.

For example, the Australian federal Age Discrimination Act 2004 (Cth), which protects against discrimination on the basis of ‘age’, includes but is not restricted to discrimination on the basis of older age: https://www.legislation.gov.au/Details/C2014C00009.


Article 2: www.oas.org/en/sia/dli/inter_american_treaties_A_70_human_rights_older_persons.asp

‘Harmless population ageing for economic progress requires that assumptions and stereotypes regarding old age be challenged. Central to this is acknowledgement that diversity is a defining characteristic of old age, and the consequent reflection of this heterogeneity in public policies, including in employment and labour market policies. Heterogeneity among older persons is observed in needs, capacities, preferences and health and economic status, among other factors, suggesting that a successful response to population ageing and longevity needs to be multifaceted.’ United Nations, Follow-up to the International Year of Older Persons: Second World Assembly on Ageing, Report of the Secretary-General, UN Doc A/75/128, para 31 (2020).

For example, some laws prohibiting discrimination on the ground of age provide or have been interpreted as requiring the complainant to show that their age was the sole criterion for the adverse treatment rather than allowing a claim where age was one of the grounds on which the adverse treatment was based.

WHO has classified older persons and, in particular, those with underlying health problems such as high blood pressure, heart problems or diabetes, as being more at risk of becoming seriously unwell with COVID-19 (WHO, Q&A on Coronavirus).


ECtHR, Cyprus v Turkey, Application No 25781/94, judgment of the Grand Chamber of 12 May 2014, para 219; ECtHR, Hristozov and Others v. Bulgaria, Applications Nos. 47039/11 and 358/12, judgment of 13 November 2012, para 106.


Royal Commission into Aged Care Quality and Safety (Australia), Aged Care and COVID-19: a special report, 1 October 2020.


United Nations Department of Economic and Social Affairs, above n 38; Fraser et al, above n 41.


International Labour Organization, Older Workers Recommendation, 1980 (Recommendation 162).


All but five of the ASEM Partner Countries (Brunei Darussalam, China, Malaysia, Myanmar and Singapore) are parties to the ICCPR. China has signed the treaty but not ratified it; however, it applies to the Macao and Hong Kong Special Administrative Regions of the PRC: United Nations, Status of Treaties deposited with the Secretary-General (Status of Treaties), https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=M&lang=en (as of 10 January 2021). There were 173 States parties to the ICCPR as of 10 January 2021.
All but three of the ASEM Partner Countries (Brunei Darussalam, Malaysia and Singapore) are parties to the ICESCR, which has 171 States parties in total: Status of Treaties, above n 54, Chap IV.3. Eight ASEM Partners have ratified or acceded to the Optional Protocol to the ICESCR, while four others have signed but not ratified the treaty: id at Chap N.3.a.

(ICCPR, art 2(1); ICESCR, art 2(2)). Similar provisions appear in the European Convention on Human Rights, art 14 and Protocol 12, art 1; American Convention on Human Rights, arts 1(1), 24; African Charter on Human and Peoples' Rights, arts 2, 3; Age is not included explicitly as a prohibited ground of discrimination in other important sectoral treaties such as the UN Economic and Social Council Convention against Discrimination in Employment 1960 or ILO Convention No 111 on Discrimination in Occupation and Employment 1958, though the latter treaty allows States parties to add age as a protected status in their domestic implementation framework and many have done so.


The mandate of the OEWGA was set out in UN General Assembly resolution 65/182, para 28 (21 December 2010) and has been updated in UN General Assembly resolution 67/139, para 1 (20 December 2012) and resolution 74/125, para 52 (18 December 2019).

See generally Annie Herro and Andrew Byrnes, ‘Framing contests over the human rights of older persons’ (2020) 38 Australian Yearbook of International Law 253-284.


For an overview of the Council of Europe and its human rights system, with a focus on how it deals with ageism and the rights of older persons, see Barbara Mikolajczyk, ‘The Council of Europe’s Approach towards Ageism’ in Liat Ayalon and Clemens Tesch-Römer (eds), Contemporary Perspectives on Ageism (Springer) (2018) 321-339.

The European Social Charter was first adopted in 1961 and added to by a substantive additional protocol in 1988; the Revised Charter adopted in 1996 is a consolidated version of those two instruments.

Mikolajczyk, above n 64, 331-335.

Pursuant to the Additional Protocol of 1995 providing for a system of collective complaints (CETS No. 158), entered into force on 1 July 1998.


Article 14 provides protection against discrimination on the basis of any ground such as ‘sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’

Council of Europe and European Court of Human Rights, Guide on Article 14 of the European Convention on Human Rights and Article 1 of Protocol No. 12 to the Convention: Prohibition of discrimination, updated on 31 August 2020. For example, in Schweizgebel v Switzerland, Application No 25762/07, judgment of 10 June 2010, the Court held that refusing a single woman permission to adopt a second child on the ground of her sexual orientation would violate Article 14 of the Convention in conjunction with Article 8 (right to family life).

Article 1 of Protocol 12 guarantees freedom from discrimination’ on any ground such as sex, race colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

Mikolajczyk, above n 64.

Id at 329-331.

European Committee of Social Rights, Fellesforbundet for Sjøfolk (FFFS) v Norway, Complaint No 74/2011, Decision on the merits of 2 July 2013.

Article 21(1) provides protection against discrimination based ‘on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.’


Part from the provision, many claim that older people's rights and issues of discrimination are given a lower priority than those of other groups.
Article 23 (‘The right of older persons to social protection’) provides:

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

–to enable elderly persons to remain full members of society for as long as possible, by means of:
  a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

–to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  b. the health care and the services necessitated by their state;

–to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.


For example, in the early case of Areóp v Ireland, Application No 6289/73, judgment of 6 February 1981, the ECtHR held that although the convention protects civil and political rights, many of them have a social or economic impact and should therefore be considered admissible. In that case the Court held that access to legal aid was required for a person to enjoy her right of access to a fair hearing in a complex matrimonial case.


Gerhard Fuchs and Peter Köhler v Land Hessen, Joined Cases C-159/10 and C-160/10, judgment of 21 July 2011.


European Committee of Social Rights, Central Association of Carers in Finland v Finland, Complaint No 70/2011, decision on the merits of 4 December 2012; European Committee of Social Rights, Central Association of Carers in Finland v Finland, Complaint No 71/2011, decision on the merits of 4 December 2012; European Committee of Social Rights, Central Association of Carers in Finland v Finland, Complaint No 74/2011, Decision on the merits of 2 July 2013; International Federation of Associations of the Elderly (RIAPA) v France, Complaint No 145/2017, decision on the merits of 22 May 2019.


Id at 21-22.


ASEAN Charter, art 2(2)(i).

The themetic reports prepared by AIHCR are available at https://aihcr.org/reports/.


The ACWC included the preparation of a compilation of good practices on active ageing and women in ASEAN in 2012, but the results of that work do not appear to be available on its website.


Article XXII of the Maputo Protocol guarantees ‘Special protection for elderly women’; while Articles XIX and XX guarantee protection in relation to widow’s rights and the right of inheritance, both of particular relevance to older women.

Another form that such protection has taken is the modern national human rights institution that draws on the tradition of the Ombuds institutions. The Ombudsman Committee of the International Bar Association, quoted in N E Holm, ‘The Ombudsman – A gift from Scandinavia to the World’. The Office of the Parliamentary Ombudsman/Ombudsperson was established in Sweden in 1809. The system was introduced to be supervisory.


Another form that such protection has taken is the modern national human rights institution that draws on the tradition of the Ombuds institutions but has a broader mandate encompassing a number of grounds of discrimination. There are now more than a hundred such institutions around the world, many established in conformity with the Paris Principles on national human rights institutions and including some Ombuds institutions with broad or combined mandates. Some of these have explicit mandates or programmes in relation to older persons (for example, the Philippines, Australia, Germany).

For a description of the elements of a substituted decision-making, see Committee on the Rights of Persons with Disabilities, General comment No 1 (2014): Article 12 – Equal recognition before the law, UN Doc CRPD/C/GC/1, para 27 (2014).

Id at 363-368.

Id at para 15.

Id at para 17.

Titti Mattson, ‘“Participation” for all? Challenges and Tools to realise participation for vulnerable persons with a focus on health services’ in Marlies Hesselman, Antenor Hallo de Wolf and Brigit Toebes (eds), Socio-economic human rights in essential public services provision (Routledge, 2016), 205-221.

Articles 1 and 3.


HM v Switzerland, Application No 39187/98, judgment of 26 February 2002. See the dissenting opinion of Judge Loucaides on the issue of whether there was a basis for finding that the complainant was a person of ‘unsound mind’.

Dewicka v Poland, Application No 38670/97, judgment of 4 April 2000.


The Office of the Parliamentary Ombudsman/Ombudsperson was established in Sweden in 1809. The system was introduced to be supervisory system that would allow the parliament some control over the exercise of the executive power.


Another form that such protection has taken is the modern national human rights institution that draws on the tradition of the Ombuds institutions but has a broader mandate encompassing a number of grounds of discrimination. There are now more than a hundred such institutions around the world, many established in conformity with the Paris Principles on national human rights institutions and including some Ombuds institutions with broad or combined mandates. Some of these have explicit mandates or programmes in relation to older persons (for example, the Philippines, Australia, Germany).


Alston concludes that the right to social protection is not a novel human right and “is no more than a combination of the right to social security and the right to an adequate standard of living”, although one might argue that there is an additional on other rights, given the references to access to health services: United Nations, Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston [Alston report], UN Doc A/69/297, para 34 (2014).


Sepúlveda Carmona report, above n 139, para 26.

Ibid.

See id at paras 28-36 for a discussion of the situation of older persons in this context.


Ibid.

Ibid.

Other than in relation to the right to social security.

The right to social security includes old-age benefits as one of its nine branches: ‘child and family benefits, maternity protection, unemployment support, employment injury benefits, sickness benefits, health protection, old-age benefits, disability benefits and survivors’ benefits.’ World Social Protection Report, above n 137, 2. Of course, older persons who are younger than the pension age and who satisfy the eligibility requirements for other benefits would be entitled to claim them.


Convention on the Elimination of All Forms of Discrimination against Women, Articles 11(1)(e), 11(2)(b) and 14(2)(c); Convention on the Rights of the Child, Articles 26 and 27(1); International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e)(v); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 27 and 54; Convention on the Rights of Persons with Disabilities, Article 28.


CESCR, General comment No 19 (the right to social security (art 9)), UN Doc E/C.12/GC/19 (2008).


Article 17 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights provides that everyone ‘has the right to social protection in old age’; and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa, Article 7 (Social protection) requires States parties to ensure that the right of older persons to income security and other forms of social protection is ensured.


Id at paragraph 1.

Id at paragraph 3.

Id at paragraph 5.

Entered into force 27 April 1955.

Entered into force 1 November 1969.


Id at 3.


Id at 79.


World Social Protection Report above n 137, 152.

See Committee on Economic, Social and Cultural Rights, general comment No. 14, “The right to the highest attainable standard of health” (E/C.12/2000/4, paras. 25, 34 and 35).

World Social Protection Report above n 137, 152.

Digest of the case law of the European Committee of Social Rights, December 2018, 128-136; Digest of the case law of the European Committee of Social Rights, Appendix, above n 81, 164-178.

Vo v France, Application No 53924/00, judgment of 8 July 2004; R R v Poland, Application No 27617/04, judgment of 26 May 2011; Cyprus v Turkey, Application No 25781/94, judgment of 10 May 2001; Pentiacova and others v Moldova (complaint No. 14462/03 decision on admissibility of 4 January 2005; and Niteck v Poland, Application No 65653/01, decision on admissibility of 21 March 2002. The cases concerned possibility of performing dialysis and refunding life-saving medications. But in Dvořářek and Dvořářková v Slovakia Application No 30754/04, judgment of 28 July 2009, the Court decided that while there was a violation of Article 6(1) of the ECHR there was no violation of the right to life due to protracted medical procedures.


Id at para 58, p 15.

Id at para 59.

Id at para 62.

However, Article 6 of the Inter-American Convention on Protecting the Rights of Older Persons guarantees the right to access palliative care.

General comment No 14 on the right to the highest attainable standard of health (2000), para 34; General comment No 20 on non-discrimination in economic, social and cultural rights (2009) (call to ensure ‘even distribution in the availability and quality of primary, secondary and palliative health-care facilities’, notwithstanding person’s place of residence); General comment No 22 on the right to sexual and reproductive health (2016), para 7 (referring to statement in General comment No 14 that the right to health includes ‘the right to the provision of preventive, curative and palliative health care’).

This Convention is in force for only 35 States, and most ASEM partners in the Asian region are not parties to the Convention.


Preambular para 4.

Preambular para 3.

Preambular para 4.


For a detailed discussion of the consistency of mandatory retirement ages with the principle of non-discrimination on the basis of age, see Byrnes et al, above n 184, 18-23.

See also the Employment Promotion and Protection against Unemployment Convention, 1988 (ILO No 168) which requires both the promotion of employment of opportunities for groups that include older workers (Article 8(1)), as well as ensuring that in providing support to workers who lose their jobs there is no discrimination on the basis of age (Article 6(1)). However, only eight States have so far ratified this Convention.

In fact, any ILO instrument application of general application potentially applies and those related to social security may also be of relevance to older workers who often have care responsibilities.

This Convention is in force for 175 States, including most of the ASEM partners.

This Convention is in force for only 35 States, and most ASEM partners in the Asian region are not parties to the Convention.

ILO Convention No 156, Articles 5 and 6.

International Labour Office, Transitioning from the informal to the formal economy, International Labour Conference, 103rd session 2014, Report V (1), Chapter 2 (‘The regulatory environment relating to the informal economy’).

Article 26 provides in part:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace….
See Committee on Economic, Social and Cultural Rights, General comment 13: the right to education. See also Article 29 of the Convention on the Rights of the Child which provides that the education of the child shall be directed to:
(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.
Similar goals are set out in Article 24(1) of the CPRD.

A similar obligation is contained in the UNESCO Convention against Discrimination in Education 1960, Article 4(c) of which requires States parties to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity . . .

Article 43 of the International Convention on the Rights of Migrant Workers and Members of their Families provides that migrant workers are, subject to admission requirements, to enjoy equality of treatment with nationals in relation to access to educational institutions and services, to vocational training, placement services and retraining facilities.

A similar focus appears in Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, though it does also include an obligation to organise ‘programmes for girls and women who have left school prematurely’.


Para 12(c). See also paras 21 (c), 35-36.

Report of the Independent Expert on the human rights of older persons, UN Doc A/HRC/39/50, para 31 (2018) (noting Target 4.4 is linked only to jobs and employability but not broader notions of lifelong learning). Similarly, in the 2016 report on lifelong education of the Human Rights Council’s Special Rapporteur on the right to education, calls on States call on States to “develop a normative framework that reflects the right to education, lifelong learning and training” (A/71/358, para 103) but makes few substantial references to the relevance of the concept for older persons.

See also the 2017 Report of the Special Rapporteur on Education, UN Doc A/72/496 (2017), which deals with “the role of equity and inclusion in strengthening the right to education, in particular in the context of achieving the Sustainable Development Goals”. The report is silent on older persons but examines about a dozen other groups under the heading “People and groups at risk of exclusion”.


Closing Address

A global legal instrument is needed to promote and protect the rights and dignity of older persons

Amal ABOU RAFEH
Chief of Programme on Ageing Unit
Department of Economic and Social Affairs, United Nations

(Closing address at the 20th Informal ASEM Seminar on Human Rights)

Colleagues, ladies, and gentlemen,

It is a pleasure to be here at the concluding session of the 20th Informal ASEM Seminar on Human Rights of Older Persons. I wish to thank the co-organisers of the Seminar for inviting me to deliver my closing reflections.

We have heard, over the past three days, from a number of experts representing national human rights institutions, academia, and civil society organisations. Their experience is extremely valuable. We must listen and learn from them.

Autonomy and Independence

Older people have the right to make decisions, to determine their life course, to lead an autonomous life, and to have those decisions respected. I was 15 years old when the United Nations General Assembly encouraged all (166) Member States at the time to incorporate the core principle of independence in their national policies that relate to older people. I will leave it to you to figure out my age.

Yet, there is no universally agreed definition of these rights. Explicit standards in international human rights law are insufficient. And where a number of instruments recognise those rights, the standards vary and are inconsistent across regions.

Autonomy, respect for will and preferences, and the ability for older persons to carry out their decisions in practice remain aspirational.

Social Protection

Universal social protection systems are the foundation for social inclusion and economic prosperity. And a life course approach to social protection is fundamental to ensure that persons reach and live old age in economic security. Yet coverage gaps in some developing countries are sizeable, with less than 20% of older persons of retirement age receiving a pension.

Worldwide, three out of four older persons are in informal employment. Entering the informal economy is often not by choice but rather the result of a lack of opportunities in the formal economy and in the
absence of other means of livelihood, where older people have to work well into old age to sustain themselves and their families given low or non-existent pension systems with adequate benefits.

And this is not just about older persons. New indicators of informality reveal that, in the absence of effective policies, the vulnerability experienced by informal economy workers will be passed on to their families. It is no surprise that the UN Secretary-General is calling for a new generation of social protection policies.

The discussions at this seminar showed that while social protection is an internationally recognised right, key elements of a rights-based approach to social protection for older people still need to be addressed, including universality of protection and effective access; relationship with other human rights; gender and governance.

**Age Discrimination with Focus on the Labour Market**

Age-based discrimination is one of the main barriers faced by older persons in the labour market. We heard from the experts that age-based discrimination in employment manifests itself in the form of ageist individual, institutional, systemic, or structural practices, and may become more tangible and detrimental as the share of older workers increases over time.

Unequal employment terms and conditions, lack of opportunities for promotion, discrimination in the access to training, pressure to retire, giving preference in recruitment to younger workers with comparable resumes, and also ageism in the interpersonal sphere at the workplace, with older persons often exposed to ageist jokes or remarks; disrespectful treatment by employers, co-workers or clients because of their age – all of these are examples of possible manifestations of age discrimination at work, which is exacerbated with the coexistence of variables such as gender and disability.

Like all forms of entrenched and widespread prejudice, ageism has real and measurable effects on people’s wellbeing and on the economy. A recent study by AARP and the Economist Intelligence Unit in the U.S. explored the economic costs of age discrimination in the workplace. It found that, in 2018, a potential uplift of more than 5% in GDP (that is USD 850 billion) was foregone because workers aged 50 years and older were not given the opportunity to remain in or re-enter the labour force, or switch jobs, or be promoted within their existing company.

**Empowerment through Education and Training**

There is growing acceptance amongst Member States that global ageing trends and the growing complexity of the future of work demand a population that is adaptable and resilient, as well as a lifelong learning system that provides opportunities for older persons.
We heard from the experts that inadequate access to training opportunities for older persons can hamper their ability to continue working or find new employment, as many skills become obsolete in the rapidly changing labour market and the demand for skilling, reskilling, and upskilling grows.

In our research, we decided to follow the money – and found that funding for adult learning and education is inadequate. UNESCO featured findings from a survey which included responses supplied by 159 countries. While 57% of countries mentioned a planned increase in funding, less than a third reported that adult learning and education spending had increased as a proportion of the education budget since that plan. In fact, 17% reported a decrease in funding and 41% reported no progress.

The lack of appropriate provisions is a major barrier that needs to be addressed. We believe that an agenda for reducing inequalities will have to be informed by analysis of the future of work and consideration of a reinvigorated social contract that views the right to lifelong learning as a cornerstone.

**Conclusion**

In a few weeks, the 11th session of the General Assembly Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons will take place.

It takes place as the world continues to grapple with the hard reality that the pandemic crisis has laid bare. Not only did the pandemic expose existing inequalities; it worsened them, often amplifying critical human rights protection gaps for older persons that have perpetuated over the years. Many of these we have discussed in depth at this seminar.

For the first time, the Secretary-General has leaned into a decade-long conversation of considering the existing international framework of the human rights of older persons and identifying possible gaps and how best to address them.

In his policy brief on the impact of COVID-19 on older persons, which was supported by 146 Member States, the Secretary-General called for accelerated efforts of the General Assembly Working Group to develop proposals for an international legal instrument to promote and protect the rights and dignity of older persons.

We look forward to your active engagement in this session.

It has been an honour to be among such accomplished experts in this Seminar and to be able to present my perspective before you all.

I thank you and good evening.
Annex 1: Glossary

AARP: American Association of Retired Persons (now known as AARP)
ACWC: ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AGAC: ASEM Global Ageing Center
AICHR: ASEAN Intergovernmental Commission on Human Rights
ASEAN: Association of Southeast Asian Nations
ASEF: Asia-Europe Foundation
ASEM: Asia-Europe Meeting
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women
CESCR: United Nations Committee on Economic, Social and Cultural Rights
CJEU: Court of Justice of the European Union
CRC: Committee on the Rights of the Child
CRPD: Convention on the Rights of Persons with Disabilities
ECHR: European Convention on Human Rights
ECtHR: European Court of Human Rights
ENNHRI: European Network of National Human Rights Institutions
ESCAP: United Nations Economic and Social Commission for Asia and the Pacific
EU: European Union
GANHRI: Global Alliance of National Human Rights Institutions
GAROP: Global Alliance for the Rights of Older Persons
ICCPR: International Covenant on Civil and Political Rights
ICESCR: International Covenant on Economic, Social and Cultural Rights
ILO: International Labour Organization
MIPAA: Madrid International Plan of Action on Ageing
NHRI: National Human Rights Institution
OHCHR: Office of the United Nations High Commissioner for Human Rights
OEWGA: United Nations Open-ended Working Group on Ageing
SAARC: South Asian Association for Regional Cooperation
SDG: Sustainable Development Goals
UDHR: Universal Declaration of Human Rights
UNCECE: United Nations Economic Commission for Europe
UNDESA: United Nations Department of Economic and Social Affairs
UNESCO: United Nations Educational, Scientific and Cultural Organization
UPR: Universal Periodic Review
VIPAA: Vienna International Plan of Action on Ageing
WHO: World Health Organization
### Annex 2: Seminar Programme

**DAY 1 – MONDAY, 22 FEBRUARY 2021**
Location: Online / Seoul, Republic of Korea

<table>
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<tr>
<th>Time</th>
<th>Session</th>
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<tbody>
<tr>
<td>15:00 – 15:30</td>
<td><strong>Official Welcome</strong></td>
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<tr>
<td></td>
<td>Welcome Remarks</td>
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<tr>
<td></td>
<td><strong>Ambassador Toru MORIKAWA</strong></td>
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<td></td>
<td>Executive Director, Asia-Europe Foundation (ASEF)</td>
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<td></td>
<td><strong>Ms Eun-Hee CHI</strong></td>
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<td></td>
<td>Executive Director, ASEM Global Ageing Centre (AGAC)</td>
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<td></td>
<td><strong>Congratulatory Remarks on behalf of the host</strong></td>
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<tr>
<td></td>
<td><strong>Ms Young-ae CHOI</strong></td>
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<tr>
<td></td>
<td>Chairperson, National Human Rights Commission of Korea</td>
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<td></td>
<td><strong>Congratulatory Remarks on behalf of the co-organisers</strong></td>
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<td></td>
<td><strong>Ms María CASTILLO FERNÁNDEZ</strong></td>
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<td></td>
<td>Ambassador, Delegation of the European Union to the Republic of Korea</td>
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<td></td>
<td><strong>Keynote Address</strong></td>
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<td><strong>Dr Claudia MAHLER</strong></td>
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<td>Independent Expert on the Enjoyment of All Human Rights by Older Persons</td>
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<td>15:30</td>
<td><strong>“Importance of the Human Rights of Older Persons”</strong></td>
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<td>Video by ASEM Global Ageing Centre</td>
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<td>15:35 – 16:15</td>
<td><strong>Joint Presentation of Background Paper by Main Rapporteurs</strong></td>
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<td><strong>Moderator:</strong> Mr Rolf RING, Raoul Wallenberg Institute of Human Rights and Humanitarian Law</td>
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<td></td>
<td><strong>Presenter 1:</strong> Prof Titti MATTSSON, Dean of Research, Professor in Public Law, Lund University</td>
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<td><strong>Presenter 2:</strong> Prof Andrew BYRNES, Professor of Law, University of New South Wales</td>
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<tr>
<td>16:15 – 16:45</td>
<td><strong>Plenary discussion with virtual audience</strong></td>
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<td>16:45 - 16:55</td>
<td><strong>Break</strong></td>
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<td>Cultural highlights of Korea (video)</td>
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<td><strong>Venue:</strong> Seoul</td>
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<td><strong>Panelists:</strong></td>
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<td></td>
<td><strong>Ms Eun-Ha NAMKUNG</strong>, Associate Research Fellow, Center for Research on Aging Society of Korea Institute for Health and Social Affairs (KIHASA)</td>
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<td><strong>Ms Hana BECKER</strong>, First Secretary of Political Affairs, Embassy of the Federal Republic of Germany</td>
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<td><strong>Ms Nina MONRAD BOEL</strong>, Counsellor of Health, Embassy of Denmark in Korea</td>
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<td><strong>Discussants:</strong></td>
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<td><strong>Mr Dongwoo LEE</strong>, Deputy Director, Social Human Rights Division, National Human Rights Commission of Korea</td>
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<td><strong>Mr Eduardo KLIEN</strong>, Regional Director, HelpAge International Asia Pacific</td>
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<td><strong>Ms Nena GEORGANTZI</strong>, Policy Coordinator Human Rights &amp; Non-Discrimination, AGE Platform Europe</td>
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<td><strong>Moderator:</strong></td>
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<td><strong>Ms Kyung-Hee CHUNG</strong>, Member of AGAC Expert Group and former Senior Research Fellow of Korea Institute for Health and Social Affairs (KIHASA)</td>
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<td><strong>Followed by Q&amp;A session with virtual audience</strong></td>
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DAY 2 – TUESDAY, 23 FEBRUARY 2021
Venue: Online platform

15:00-18:00 Simultaneous Working Groups

<table>
<thead>
<tr>
<th>Working Group 1</th>
<th>Theme: <strong>Autonomy and Independence of Older Persons</strong></th>
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<tbody>
<tr>
<td>Rapporteur: Prof Titti MATTSSON, Lund University</td>
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<td>Moderator: Mr Rio HADA, Office of the High Commissioner for Human Rights (OHCHR)</td>
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<tr>
<th>Working Group 2</th>
<th>Theme: <strong>Social Protection and Human Rights of Older Persons</strong></th>
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<tr>
<td>Rapporteur: Prof Andrew BYRNES, University of New South Wales</td>
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<tr>
<td>Moderator: Mr Srinivas TATA, United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)</td>
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<th>Working Group 3</th>
<th>Theme: <strong>Age Discrimination against Older Persons Focusing on Labour Markets</strong></th>
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<tr>
<td>Rapporteur: Prof Jolanta PEREK-BIALAS, Jagiellonian University</td>
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<td>Moderator: Dr ZHANG Wenjuan, Renmin University</td>
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<th>Working Group 4</th>
<th>Theme: <strong>Empowerment of Older Persons through Education and Training</strong></th>
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<tr>
<td>Rapporteur: Prof Yeong-Ran PARK, Kangnam University</td>
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<td>Moderator: Ms Bridget SLEAP, HelpAge International</td>
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DAY 3 – WEDNESDAY, 24 FEBRUARY 2021
Venue: Online

15:00 – 17:00 Closing Plenary

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<th>Venue: Online platform</th>
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<tr>
<td>Chair: Mr Achsanul HABIB, Director of Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs of the Republic of Indonesia</td>
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15:00 – 15:40 Rapporteurs’ Summary on Each Workshop

| Working Group 1 Presentation |
| Theme: **Autonomy and Independence of Older Persons** |

| Working Group 2 Presentation |
| Theme: **Social Protection and Human Rights of Older Persons** |

| Working Group 3 Presentation |
| Theme: **Age Discrimination against Older Persons Focusing on Labour Markets** |

| Working Group 4 Presentation |
| Theme: **Empowerment of Older Persons through Education and Training** |

15:40 – 16:40 Q&A Session with virtual audience

| Chair: Ms Jenny PIAGET, Federal Department of Foreign Affairs of Switzerland |

16:40 – 17:00 Official Closing

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<th>Closing address</th>
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<tr>
<td>Ms Amal ABOU RAFEH, Chief of Programme on Ageing Unit, Department of Economic and Social Affairs, United Nations</td>
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<th>Closing Remarks on behalf of the host</th>
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<tr>
<td>Ms Hye-kyung LEE, Chairwoman of AGAC Board of Directors, Professor Emeritus of Yonsei University</td>
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<th>Closing Remarks on behalf of the organisers</th>
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<tr>
<td>Ms Jenny PIAGET, Federal Department of Foreign Affairs of Switzerland</td>
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17:00 End of Programme

17:00–18:00 Virtual networking
I. Introduction

Global Population Ageing

Population ageing is a global phenomenon that has been happening at an unprecedented rate. According to the UN World Population Prospects 2017, the population aged 60 or above is about 960 million (13% of the world’s population) as of 2017, and it will more than double by 2050 (about 2.1 billion) and more than triple by 2100 (about 3.1 billion).

The World Health Organization (WHO) says the world is experiencing an unprecedented pace of ageing and predicts that the population aged over 60 will outnumber the population of children aged under five by 2020.

The ageing phenomenon is one of the most important challenges for ASEM partners, and therefore should be on the cooperation agenda. The European region has the highest percentage of older persons, while Asia has the highest number of elderly populations. In Europe, 25% of the total population is aged 60 or older, and in Asia, 12% of the total population is aged 60 or above which accounted for 57% of the world’s aged population in 2017.

The increased longevity has come about because of improved nutrition, hygiene, medical treatment, health, education, and economic standards, and it is one of the greatest achievements of mankind. In this respect, population ageing should not be regarded as a problem but as an opportunity. However, the unavoidable fact is that global ageing could present various social, economic, and cultural challenges to every society, especially in the area of the human rights of older persons.

Problems such as poverty, abuse, alienation, and age discrimination have been emerging internationally due to rapid ageing. Greater international attention is now being paid to the protection of the human rights of older persons. The global health crisis created by the COVID-19 pandemic, and the adverse effects on older persons, has acted as a wake-up call to the need to strengthen the promotion and protection of the rights of older people.

Human rights experts have noted that while older persons have been the group most affected by the pandemic, their collective voice has been absent in the process of handling the COVID-19 crisis and their needs and vulnerabilities have been overlooked. The Secretary-General of the United Nations, António GUTERRES, highlighted that, against the backdrop of age discrimination, disparities in social protection and healthcare, and lack of autonomy and decision-making power, the pandemic has “exacerbated pre-existing human rights gaps and social-economic challenges for older persons”; and has called on countries to adopt a more cooperative, global, and human rights-based approach in their response to it.

Thus, it is more important than ever that countries take stock of the policies and practices relating to the elderly to ensure that not only are they adequate in addressing the challenges of an ageing population, but that they take the needs and rights of elderly into account on an equal basis with others.
Human Rights of Older Persons and International Context

Like other age groups, older persons should be able to enjoy all their rights and live a dignified and decent life.

The United Nations (UN) long ago recognised population ageing as a pending global issue and placed it on the agenda for discussion by the international community. It held the First World Assembly on Ageing in Vienna in 1982 and adopted the Vienna International Plan of Action on Ageing (VIPAA). In 1991 it published the United Nations Principles for Older Persons and in 1992 the UN Proclamation on Ageing.

The Second World Assembly on Ageing was held in Madrid in 2002 and the Madrid International Plan of Action on Ageing (MIPAA) was adopted. The international community has been facing a paradigm shift from a welfare approach to a human rights approach, recognising the elderly as the subject of human rights rather than the passive recipients of welfare benefits.

In 2010, the UN established the UN Open-ended Working Group on Ageing (OEWGA) with the aim of strengthening the protection of human rights of older persons. In 2014, the first UN Independent Expert on the enjoyment of all human rights by older persons was appointed. The Global Alliance of National Human Rights Institutions (GANHRI) established the Working Group on Ageing in 2016, and National Human Rights Institutions were encouraged to be actively involved in highlighting the importance of the human rights-based approach toward older persons.

In Europe, the United Nations Economic Commission for Europe (UNECE) and the Working Group on Ageing of UNECE have been working on addressing Europe’s ageing issues by supporting their member states to adjust to demographic change by mainstreaming population ageing in the national policy and regulatory frameworks and creating an enabling environment.

In 2014, the Council of Europe adopted the Recommendation on the Promotion of Human Rights of Older Persons. This takes a human rights-based approach to the situation of older persons and provides principles and good practices for member states to ensure fundamental rights and freedoms for all older persons. The United Nations Human Rights Regional Office for Europe (OHCHR ROE) has also done significant work to emphasise the importance of the human rights mechanisms to address the rights of older persons.

Asian countries are also actively cooperating on addressing the ageing and human rights of older persons’ and related issues. ASEAN member states adopted the Kuala Lumpur Declaration on Ageing in 2015, and three Northeast Asian countries (Republic of Korea, People’s Republic of China, Japan) and the ASEAN member states agreed on the ASEAN Plus Three Statement on Active Ageing in 2016, in order to prepare for and respond to rapid population ageing in Asia and to promote human rights of older persons.
International Mechanisms to Protect Human Rights of Older Persons

The UN has endeavoured to develop and improve domestic laws, policies, and institutions to guarantee human rights in each member state through the Universal Declaration of Human Rights (UDHR) and various international norms, including the human rights conventions for protecting vulnerable groups. The human rights conventions for women, children, migrant workers, and persons with disabilities have been enacted, but the international convention for human rights of older persons is still absent.

Although existing international human rights conventions include some provisions that could be applied to the protection of older persons’ rights, such as the prohibition of age discrimination and emphasis on equality, there are clear limits to the provision of specific measures to prevent age discrimination and to fully address issues related to human rights of older persons. Due to the absence of an international convention for human rights of older persons, there are gaps in each country’s national laws and systems. Also, the lack of grounds in international law has resulted in difficulties in establishing concrete cooperative measures for human rights of older persons.

UN member states have different views on the need for a convention for human rights of older persons. The UN General Assembly decided to establish the UN OEWGA in 2010 and it has held annual meetings since 2011 but there still remains a clear difference between two positions.

The majority of developing countries and accredited NGOs support the establishment of the convention, whereas most developed countries are opposed to creating another convention. Those who are in favour of the convention emphasise the need for it given the lack of provisions related to human rights of older persons in existing norms, the lack of implementation, and the lack of interrelationship and systematicity due to the scattered regulations. The countries that are opposed to the new convention argue that existing international norms are sufficient to protect the human rights of older persons, and that the implementation should be improved by each country.

II. 20th Informal ASEM Seminar on Human Rights

The Informal ASEM Seminar on Human Rights series was launched in 1997 to deepen relations between civil society actors and governments in Asia and Europe on major human rights issues. The Seminar series is co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippines Department of Foreign Affairs, the Swiss Federal Department of Foreign Affairs, and the Ministry of Foreign Affairs of the People’s Republic of China.

The 20th Informal ASEM Seminar on Human Rights, which will discuss the Human Rights of Older Persons, will be co-hosted by the Ministry of Foreign Affairs of the Republic of Korea, the ASEM Global Ageing Center, an international specialised institution to promote and protect human rights of older
persons of ASEM Partners, and the National Human Rights Commission of Korea. The Seminar will be followed by public events and capacity-building activity to disseminate the outcomes of the Seminar and to improve the knowledge and capacity of relevant actors in Asia and Europe on the theme of the Seminar. The follow-up activities will be delivered in 2021.

Objectives and Working Group Discussion Topics

Given the importance of the human rights of older persons and the fact that a binding international instrument is still lacking, there is a need to improve domestic laws and institutions to promote and protect human rights of older persons. International cooperation and the sharing of best practices and policies of each country would thus be beneficial.

The 20th Informal ASEM Seminar on Human Rights will allow ASEM Partners to build collective understanding of the major issues and status of the promotion and protection of the human rights of older persons. The Seminar will focus on four major sub-topics that require urgent efforts from the international community:

1. Autonomy and Independence of Older Persons
2. Social Protection and Human Rights of Older Persons
3. Age Discrimination against Older Persons focusing on Labour Markets.
4. Empowerment of Older Persons through Education and Training

III. Working Group Discussion Topics

Autonomy and Independence of Older Persons

The right to autonomy and independence of older persons is interrelated with the right to life, the right to freedom of expression, and the right to an adequate standard of living, including health, well-being, housing, medical care, and necessary social services, that are recognised by the UN UDHR. The right to autonomy affects various aspects of older people’s lives, including the making of decisions about their support and care, choice of treatment, personal freedom, and leisure time.

These rights are, however, often denied because of the ageist view that older persons cannot make their own decisions. This negative perception is widespread throughout societies from governments to family members, and it prevents older people from making important decisions in their lives, including about their finances, property, employment, who to vote for, family life, and participation in social or voluntary activities. When solving personal problems or difficulties, such as in determining their place of living, medical treatment, and health services, many older persons do not have the chance to express their preferences or choices.

1 Currently the 53 ASEM partners are: Australia, Austria, Bangladesh, Belgium, Brunei Darussalam, Bulgaria, Cambodia, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Korea, Lao PDR, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russian Federation, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, United Kingdom, Viet Nam, the ASEAN Secretariat and the European Union (Source: https://www.asef.org/about/faq)
With the increase in life expectancy, receiving comprehensive long-term care and support services becomes an important issue for older persons. However, many older persons do not have the right to self-determination regarding their treatment and care. Often, they have to choose between care by family members or by care providers without any other alternatives or informed consent. In Korea, a survey found that 60% of the older persons living in nursing homes were admitted against their will. The issue of self-determination for persons with dementia often triggers an intense debate. While persons with severe dementia might have limited capacity and consciousness to make their own decisions, we should bear in mind that the common ground for all these issues is to safeguard the dignity, autonomy, and right to self-determination of older persons in their choices of care and treatment. Therefore, regardless of illness or functional impairment, the institutional strategies and social environment, including the design of care services and residential settings, should guarantee the autonomy and participation of the people concerned.

To tackle the problem of ageism and the negative perceptions of older persons, governments and civil society need to identify restrictive practices and to promote the right of older persons to freedom, autonomy, and independence.

Social Protection and Human Rights of Older Persons

The system of social protection plays a significant role in ensuring basic human rights in later life. The UN Independent Expert’s report states that social protection encompasses “a wide range of policies designed to address the risks and vulnerabilities of individuals and groups, irrespective of whether they can or cannot work.”

Social protection ensures that older persons can secure their safety and well-being. The social protection has tended to be focused on income security and health care security by means of social insurance (basic or income-related pension) and social assistance (public assistance) in old age.

A social pension is the most well-known and well-established policy instrument that ensures income security of older persons. At the global level, 68% of the retirement-aged population receive a social pension. A recent study shows significant progress in the establishment of social pension systems among developing countries.

However, such a basic and fundamental protection system still has a wide range of blind spots. The current pension systems usually do not provide adequate coverage as well as equal outcomes for women and men. In developing countries, merely 20% of older persons above retirement age receive the pension. In other words, most older persons rely heavily on family support. Even in developed countries that have a long history of the social pension system, pension benefits are often not enough to cover older persons’ cost of living. What is needed is not only the institutionalisation of the social pension system but also adequacy of the benefits.

Furthermore, a gender perspective is essential for social protection systems, considering that women
have a higher risk of a lack of income security and economic independence in older age. Women tend to live longer than men, and they are also more likely to face poverty in older age because of a lifetime of gender-based and other kinds of discrimination, including the right to education, work, and social security.

Due to various cumulative disadvantages and inequalities as well as poorly designed pension systems, there are often gender gaps. Women are less likely than men to receive a pension at all, and if they do, they often receive lower benefits than men. Given that women participate less in the labour market, experience wage differentials, and are over-represented in informal and unstable work, the contributory pension system could create gender-biased rules and result in inequalities between men and women. Therefore, the design and improvement of the pension system must consider the situation of women in order to guarantee gender equality in older age.

The human rights framework should be considered when social protection systems are developed. Above all, social protection rights and the right to universal (non-contributory) pension should include all people, especially those who are marginalised and living in poverty. Other human rights areas that should be assured include, but are not limited to, access to information, benefit adequacy, gender equality, and older persons’ self-determination and participation in all aspects of the social protection system.

### Age Discrimination against Older Persons focusing on Labour Markets.

Age discrimination is defined as an unreasonable and negative judgement about the thoughts, behaviours, and productivity of people on the ground of age. Ageism and age discrimination should be prevented in our societies, as non-discrimination is a fundamental human right of all ages recognised by the UN UDHR, and also by many other human rights norms.

Although age discrimination and ageism appear in all areas of life, it is most common in labour markets. The major issues are age specifications in recruitment, mandatory retirement, and decent working conditions. Work is important to older persons in maintaining decent lives, as it helps the elderly to stay connected with society while giving them an income. Thus, the right to work of older persons should be guaranteed. However, many often view older persons as a burden and have negative stereotypes about their productivity which causes age discrimination in workplaces.

A gender perspective is also important to the issue. Women are exposed to more difficulties and gender-based disadvantages in labour markets. Women workers tend to experience multiple and interconnected instances of discrimination, including wage differentials, gendered perspectives on productivity, and gendered work norms. Women tend to have shorter work histories, less training, and are heavily concentrated in informal and low-paid employment. All of this leads to a lack of income security in older age.

To resolve age discrimination in labour markets and workplaces, all the stakeholders should be involved when shaping policies and institutions. Both labour demand and supply sides should change their perception and endeavour to address this issue. Employers should change their negative
and discriminatory perceptions about older persons, especially about their productivity. And older workers should continue their retraining efforts to adapt to changing labour patterns and new work environments. In addition, the government should provide sufficient training programmes for older workers and provide various employment services such as career consultation.

The concept of an ‘encore career’ could be an alternative to retirement and guarantee the right to work of older persons without age discrimination. Governments should devise various measures to guarantee older persons decent lives and connection to society by ensuring the right to work. Internationally, greater importance is being paid to the ‘Future of Work’, which examines how to successfully respond to the new opportunities and forms of work. Some of the human-centred agendas include guaranteed social protection from birth to old age, universal entitlement to lifelong learning, and adaptation to technological change. Such policies and strategies will help older workers to proactively prepare for continued work and will expand choices for the future of work transitions.

Against this backdrop, European and Asian partners should share measures and recommendations to address age discrimination in labour markets and establish institutional and legal systems to ensure that labour markets remain accessible to older persons, and that all older workers can work without discrimination.

Empowerment of Older Persons through Education and Training

Education and training have been the most effective way of empowering all ages throughout human history. The UN UDHR recognises the right to education as one of the fundamental human rights for all.

As people age, they are likely to be exposed to rapid changes in the socio-cultural, labour, and industrial environments. These include lack of income security when they retire, lack of adaptation to the new technologies, and limited physical performance. They become more vulnerable to poverty, discrimination, and social isolation. In this regard, education, and training during the process of life transitions are critical for them to live their life with dignity.

But older persons face multiple challenges with regard to access to education, training, and life-long learning. Although the right to education for all ages is grounded in international human rights laws and international treaties such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention against Discrimination in Education, the education systems in most States focus on children and youth, with no laws and policies about education for middle and older ages. The barriers and limited access to education for older ages can be regarded as human rights infringements.

In terms of human rights protection for older persons, the institutionalisation of life-long education and vocational training is important. Life-long education helps older persons better manage their life transitions and prepare for new roles in their communities. It encompasses a wide range of elements, including communication skills based on intergenerational understanding as well as adaptation to rapid social and industrial changes such as the use of information and communications technology (ICT).
20th Informal ASEM Seminar on Human Rights: Working Groups

There will be 4 simultaneous working group discussions with the following topics:

1. Autonomy and Independence of Older Persons
2. Social Protection and Human Rights of Older Persons
3. Age Discrimination against Older Persons focusing on Labour Markets
4. Empowerment of Older Persons through Education and Training

There will be both specific and cross-cutting questions for each group:

Cross-cutting questions

1. “Older persons” is an evolving concept and cannot be definitively defined. Yet, does the lack of an international definition have implications for policy coherence (both horizontal and vertical; at international, regional, and national levels) when in many countries definitions of older persons do exist for policymaking?

2. While there have been in recent years significant advocacy efforts calling for enhanced international attention and action on the human rights of older persons, there is still no dedicated international protection regime on older persons, and explicit references to older persons in binding international human rights instruments are scarce. In your opinion, is there a need for an international convention on the rights of older persons? Would such a convention make any real-life difference? What are some of the main learnings from the COVID-19 pandemic that should be taken on board when drafting this instrument?

3. How successful are the current available regional instruments in addressing the rights of older persons? (i.e. ASEAN Human Rights Declaration; Charter of Fundamental Rights of the European Union)? What role do regional organisations (i.e. ASEAN Centre for Active Ageing and Innovation, ACAI and AGE Platform Europe, European Union) play in improving capacity of member states?

4. What efforts are needed to assist older persons in understanding legal procedures and proceedings? Their rights and options? What provisions should be made for older persons with disabilities or health issues? What kind of training and support should be given to judges, prosecutors, and law enforcement officials to protect the best interests and rights of older persons? How do they ensure that older persons understand their rights, the legal procedures involved, and the implications of their participation?

5. The right to participate is important. What are the best practices for ensuring older persons’ participation is not tokenism, but informative and effective participation? How can older persons’ participation in the policy arena and decision-making be enhanced? (Discuss in relation to COVID-19 crisis response).
Working Group I: Autonomy and Independence of Older Persons

1. In 2015 the Independent Expert on the enjoyment of all human rights by older persons, Rosa KORNFELD-MATTE, identified the principle of autonomy as a central right for older persons in her report to the Human Rights Council. This principle of autonomy connects to both economic and social rights. How can the principle of autonomy be clearly included in policies relating to the protection of the human rights of older persons? How can it be further strengthened in policies relating to access to healthcare and choice of treatment? (Discuss in relation to COVID-19 response).

2. The narrative in relation to older persons is important and powerful. The focus on ‘positive ageing’ may introduce an unforgiving narrative which shuns frailty, disability, and illness. How can policies ensure that this is not the narrative projected to the general population? What role did language and ageist words play in the COVID-19 response?

3. How should respect for independence and autonomy of older persons be strengthened during health crises? What should the key learnings from COVID-19 be in this regard?

4. AGE Platform Europe (2012) has found that older persons are having their agency removed regarding care delivery. This includes caregivers failing to consider the preferences of the older persons that they care for, especially in relation to the daily routine of the older persons including food, clothes and sleeping patterns (Nena GEORGANTZI). How can these aspects of independence and autonomy be protected?

5. For older persons, including those with disabilities, who have been placed under legal guardianship, what guarantees need to be in place to ensure there is no breach of trust in that position?

6. The intersectionality of identity can increase the vulnerability of older persons in different scenarios. What are the special considerations for women, older persons from indigenous, cultural, and ethnic groups, older persons with disabilities, etc.?

7. Rosa KORNFELD-MATTE (2018) identifies the issue of the closure or privatising of sheltered housing and community centres. This reflects the diminishing role of the state. How does this affect the autonomy and independence of older persons? And how can these effects be mitigated?

8. The importance of access to information and the role of technology as a way to connect with family, friends and the community was amplified by measures related to COVID-19. What are some good practises for the use of technology to enable independence of older persons? How can the use of different technologies be further enhanced?
1. In many societies, older persons comprise a disproportionate number of the poor, the persistent poor and the poorest among the poor (Kornfeld-Matte, 2018). To what extent can social pensions (non-contributory cash income usually given by the government) help to address old-age poverty? What can be done to accelerate progress towards achieving universal social protection (and Sustainable Development Goal 1.3, concerning implementing nationally appropriate social protection systems and measures for all)?

2. There has been a fundamental shift in social and family structures. This has left many older persons more vulnerable without familial support systems. How can new support structures be created, or existing support systems enhanced, to help protect older persons?

3. The current narrative of older persons often contains concerns about the ‘costs’ of older persons and the risk of them being a ‘drain on society’. How can this narrative be changed into something positive? Are there examples of policies which have attempted to change this narrative? What kind of narrative would be preferable?

4. Research by the Organisation for Economic Cooperation and Development (OECD) has found that older women face a greater risk of poverty than their male counterparts. How can this disparity be rectified? How can policies be drafted so that this disparity can be minimised? Research further shows that caregiving responsibilities in midlife are associated with old-age poverty among women (see e.g. Wakabayashi & Donato, 2005, 2006) due to intermittent work history and inadequate retirement savings. What measures should be taken by governments to support informal caregivers, and to encourage more equal sharing of caregiving responsibilities?

5. The COVID-19 pandemic did not only threaten the lives and safety of older persons, but it also endangered their social safety nets, their jobs, and pensions. Overall, how has the socio-economic response to COVID-19 taken the needs of older persons into account? What kind of social care reform should take place to better protect human rights of older persons in crisis?

6. Are the current social protection provisions taking the needs of elderly immigrants into account? What about older LGBT persons or older persons who are chronically ill? If not, how can the needs of these vulnerable groups be protected?
Working Group III - Age Discrimination against Older Persons focusing on Labour Markets

1. How does one improve labour market participation when, in spite of legislation and policy measures, the employment needs of many older persons remain unmet? Will changing the societal perception of older persons be an important step? How can we improve the involvement of stakeholders including employers and the private sector?

2. Many policies are focused on keeping or re-introducing older persons in the labour market. However, questions arise as to whether work will be available to older persons, and what type of work this will be. What are the best strategies to ensure that the most disadvantaged and precarious workers (especially older women) are protected, including in the situation of health crises (COVID-19)?

3. Women tend to have more limited access to education and other resources over their lifetime. This leads to disadvantages in their formal and informal job opportunities. How can governments ensure that, for older persons (especially for older women), the decision to remain in the workforce is a real choice? It is important to ensure that older persons returning to the workforce do not end up doing demeaning and physically demanding work.

4. Keeping or re-introducing older persons in the labour market can also be linked to the concept of an ‘encore career’ which is a new form of work for retirees which combines income and meaningful contribution with society. Is this a suitable concept for governments to include in their older persons policy? How can we ensure that sufficient training programmes are provided to support this concept?

5. Many states have discrimination laws which are applicable to older persons. How effective are age discrimination laws in preventing discrimination based on age in the workplace? Are there further steps that need to be taken to protect older persons in the labour market against age discrimination?

6. Older person’s labour is mostly prevalent in the informal sector, so how can states push for standard setting and regulations?
Working Group IV - Empowerment of Older Persons through Education and Training

1. Although the right to education for all ages is grounded in international human rights laws and addressed in national plans, policies, and strategies too, older persons are given fewer opportunities to learn, and the vast majority of resources and policy attention is directed at the young. What can be done to improve the implementation of policies? Should governments be required to allocate more resources to lifelong learning?

2. Access to information and education is a key issue. What efforts have been made to improve access to information and education via the internet? Is this information in a suitable format for older persons? What are the resources available to service providers to ensure wider access?

3. What are some potential strategies to help older persons become more independent? This could include classes on nutrition, fitness, basic health care, finances, housework and other ‘life skills’. How can these strategies be delivered in a way that will empower older persons and promote both self-sufficiency and wellbeing?

4. To what extent have local community-based interventions (interventions that target not just older persons but also the larger society) successfully utilised poverty-reduction and social inclusion strategies? What are the factors determining success? Do these interventions empower older persons through educational opportunities? How to strengthen such programmes?

5. Older women are especially at a disadvantage as they usually both live longer than men and have had limited access to education and training. How can older women’s access to education and training be improved?

2 See for an example of community initiatives in Thailand https://www.straitstimes.com/asia/se-asia/girding-thailand-for-a-greying-future
Endnotes


iii https://www.unece.org/population/wga.html


ix https://rm.coe.int/1680695bce


xii Ibid.


xiv Ibid.


xvi Ibid.


Annex 4: About the Co-organisers

The Asia-Europe Foundation (ASEF) promotes understanding, strengthens relationships and facilitates cooperation among the people, institutions and organisations of Asia and Europe. ASEF enhances dialogue, enables exchanges and encourages collaboration across the thematic areas of culture, economy, education, governance, public health and sustainable development.

ASEF is an intergovernmental not-for-profit organisation located in Singapore. Founded in 1997, it is the only institution of the Asia-Europe Meeting (ASEM). Together with about 750 partner organisations ASEF has run more than 700 projects, mainly conferences, seminars and workshops. Over 20,000 Asians and Europeans have actively participated in its activities, and it has reached much wider audiences through its networks, web-portals, publications, exhibitions and lectures.

For more information, please visit www.ASEF.org

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide.

For more information, please visit www.rwi.lu.se
Annex 4: About the Co-organisers

The Ministry for Europe and Foreign Affairs of France, a founding member of ASEM, is pleased to have supported the Informal ASEM Seminar on Human Rights since its inception in 1997.

For more information, please visit www.diplomatie.gouv.fr/en/

The Department of Foreign Affairs of the Philippines is the prime agency of the Philippine government responsible for the pursuit of the State’s foreign policy. It is also responsible for the coordination and execution of the foreign policies of the country and the conduct of its foreign relations.

For more information, please visit www.dfa.gov.ph

The Federal Department of Foreign Affairs of Switzerland (FDFA) forms and coordinates Swiss foreign policy on behalf of the Federal Council, pursues foreign policy objectives, safeguards the interests of Switzerland and promotes Swiss values.

For more information, please visit www.eda.admin.ch

The Ministry of Foreign Affairs of the Peoples’ Republic of China.

For more information, please visit www.fmprc.gov.cn/mfa
About the Co-hosts

The **Ministry of Foreign Affairs of Korea** establishes and implements national foreign policy, including economic diplomacy and cooperation, participates in various international economic communities, administers treaties and international agreements, protects and supports overseas Korean nationals, promotes cultural cooperation, and analyzes international affairs.

For more information, please visit [www.mofa.go.kr](http://www.mofa.go.kr)

The **ASEM Global Ageing Center (ASEMGAC)** is a specialized international institution headquartered in Seoul, which operates as an international hub for coordinating a wide variety of agendas regarding human rights of older persons of ASEM partners.

The center aims to address various issues regarding human rights of older persons, which ASEM partners are confronting, and ultimately contribute to the promotion and protection of human rights of older persons through policy research, exchange cooperation, awareness raising and education, and information sharing.

For more information, please visit [www.asemgac.org](http://www.asemgac.org)

The **National Human Rights Commission of Korea** was established in 2001 as a national advocacy institution for human rights protection.

It is committed to the fulfillment of human rights in a broader sense, including dignity, value and freedom of every human being, as signified in international human rights conventions and treaties to which Korea is a signatory.

For more information, please visit [www.humanrights.go.kr](http://www.humanrights.go.kr)
About the Asia-Europe Meeting (ASEM)

The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe, which addresses political, economic and socio-cultural issues of common concern.

ASEM brings together 53 partners (21 Asian and 30 European countries, the ASEAN Secretariat and the European Union).

For more information, please visit www.aseminfoboard.org

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