

AGING IN THE 21ST CENTURY: ESTABLISHING A UNIFORM
PROTECTION OF ELDERLY PERSONS IN THE UNITED
STATES THROUGH AN INTERNATIONAL AND
COMPARATIVE LAW ANALYSIS

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“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or

other lack of livelihood in circumstances beyond his control.”¹

I. INTRODUCTION

The elderly population has historically been underrepresented throughout international and domestic legal protections. With the exception of comprehensive legal instruments that include the older person,² protections for this population are nearly nonexistent. The United States has addressed issues that affect the elderly, such as physical abuse, emotional or psychological abuse, neglect, financial exploitation, and self-neglect³ statutorily, but not through federal legislation. This lack of consensus results in a lack of consistency in the protection of the elderly.

The failure to enact federal legislation, which provides substantial guidance and remedial action, has led to the relaxed, and sometimes indiscriminate, enforcement of remedies.⁴ Until 2009, federal law has provided little to no guidance, or funding to states for the enforcement of laws regulating elder abuse.⁵ While the federal laws address elder abuse and neglect, services regulating state programs do not exist. Additionally, federal resources to enforce and regulate crimes against the elderly are not in place.⁶ As a result, the states are left to establish regulations to prosecute in a variety of ways, leading to varying degrees of prosecution. These inconsistent forms of prosecution result in different states picking and choosing which crimes or

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¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (emphasis added).

² G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights (Jan. 3, 1976).

³ *Elder Abuse*, NATIONAL INSTITUTE ON AGING, <https://www.nia.nih.gov/health/elder-abuse#types> (last visited June 10, 2019).

⁴ Mary Quinn & Candace Heisler, *The Legal Response to Elder Abuse and Neglect*, 14 J. ELDER ABUSE NEGL. 61-77 (2004).

⁵ Elder Justice Act of 2009, S. 795, 111th Cong. (2009).

⁶ Elder Victim Abuse Act, H.R. 4963, 114th Cong. (2015-2016).

civil issues are most important to them, neglecting important matters from being addressed.⁷

This article seeks to analyze and compare the international and domestic protections currently in place, and to furnish a recommendation for federal legislation. The federal legislation is meant to provide uniform protections for the elderly population.⁸ The elderly population requires protections of rights that go beyond statutory construction. Providing federal protections ensures uniform application with the assurance of enforcement guidelines upon the occurrence of abuses. While international protections exist, the enforcement for non-participating countries does not provide breadth or depth to such abuses.

As part of the Obama Administration's enactment of the Patient Protection and Affordable Care Act (PPACA) in 2010—better known as the Affordable Care Act or Obamacare—the Elder Justice Act (EJA) was passed.⁹ The EJA is the first federal legislation enacted to address the concerns of elder abuse. The purpose of this legislation was to authorize and set aside federal funds meant to address and prevent the abuse, neglect, and exploitation of the elderly.¹⁰ It provides a comprehensive framework for the prevention of elder abuse along with resources for federal and state agencies. In an effort to coordinate with agencies, entities were created to counter the exploitation and abuse of the elderly.¹¹

II. BACKGROUND: DELIMITATION OF THE PROBLEM

A. Change in Demographics

This century holds a unique and beneficial factor that has never been seen globally or nationally before. Through the advancements in technology and healthcare, the longevity of life is changing the way that individuals plan their future and assess their rights. In 2016, there were over 49.2 million individuals sixty-five and older living in the United States.¹² It is estimated that by the year 2030, there will be

⁷ Stacey Jirik & Sara Sanders, *Analysis of Elder Abuse Statutes Across the United States, 2011-2012*, 57 J. OF GERONTOLOGICAL SOCIAL WORK 478-497 (2014).

⁸ LAWRENCE A. FROLIK & ALISON BARNES, *ELDER LAW: CASES AND MATERIALS* 3 (4th ed., 2007).

⁹ Social Security Act Title XX, The Elder Justice Act of 2010, 42 U.S.C. § 1397-1397f.

¹⁰ Patient Protection and Affordable Care Act, Title VI, Subtitle H—Elder Justice Act, Pub. L. No. 111-148 (2010).

¹¹ Patient Protection and Affordable Care Act § 6701, Pub. L. No 111-148 (2010).

¹² 2017 *Profile of Older Americans*, ADMINISTRATION FOR COMMUNITY LIVING

approximately 70 million Americans aged sixty-five or older.¹³ Internationally, every developed country will see an increase in the elder population during the latter half of the twenty-first century.¹⁴ The United Nations predicts that people aged sixty and above will grow from six hundred million in 2001 to 1.2 billion by the year 2025, globally.¹⁵ These numbers indicate that the world's elderly population will double within this time frame.¹⁶ Individuals aged eighty and older will reach 137 million by 2025.¹⁷ Between the years of 1998 and 2025 alone, the population designation is expected to change in the United States and Europe. The United States is expected to increase its elder population from sixteen to twenty-six percent, while Europe will experience a more modest increase from twenty to twenty-eight percent.¹⁸ In the United States alone, one out of six Americans will be over the age of sixty-five by the year 2020.¹⁹ Approximately seventy million Americans will be "older" by 2030.²⁰ While there is no universally agreed upon number by which a person is defined as "old," the United Nations (UN) has provided a definition as guidance. Pursuant to the UN's definition, an older adult is defined as a person aged sixty or over.²¹ While the definition, or establishment of age, is different in relation to issues such as retirement and pension benefits, for the purposes of establishing a definition of what ages fall under the

(2017), <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2017OlderAmericansProfile.pdf>.

¹³ *Facts About Law and the Elderly*, AMERICAN BAR ASSOCIATION DIVISION FOR MEDIA RELATIONS AND PUBLIC AFFAIRS 1, http://www.supporteddecisionmaking.org/sites/default/files/aba_facts_aboutLaw_and_the_elderly_0.pdf (last visited Mar. 5, 2021).

¹⁴ Jonathan Gruber & David, *Wise An International Perspective on Policies for an Aging Society* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 8103) (Jan. 2001).

¹⁵ High Commissioner for Human Rights, *The Economic, Social, and Cultural Rights of Older Persons*, ¶ 1, U.N. Doc. E/C.12/1995/16/Rev.1 (1995).

¹⁶ *Id.*

¹⁷ Comm. on Econ., Soc. and Cultural Rts., 13th Sess., at 1, General Comment No. 6: The Economic, Social, and Cultural Rights of Older Persons, U.N. Doc. E/C.12/1995/16/Rev.1 (1995).

¹⁸ Second World Assembly on Ageing, *Report of the Second World Assembly on Ageing*, U.N. Doc. A/CONF. 197/9, at 5 (May 23, 2002) [hereinafter *U.N. Madrid Conf. Report*].

¹⁹ 156 CONG. REC. H3847 (2010).

²⁰ A. KIMBERLEY DAYTON, MOLLY M. WOOD & THOMAS P. GALLANIS, *ELDER LAW: READINGS, CASES, AND MATERIALS* 6 (2d ed., 2003).

²¹ *Older Persons*, UNHCR, THE UN REFUGEE AGENCY, EMERGENCY HANDBOOK, <https://emergency.unhcr.org/entry/43935/older-persons> (last visited Feb. 19, 2021).

purview of elder abuse, the UN's definition provides a universal foundation for other countries.

The increase in the older population will result in the “triangularization” of the United States demographics by the year 2025, which refers to the progression of a “bottom-heavy triangle, in which the majority of people were younger than twenty, into one in which almost all age groups from 0 to 80+ are roughly the same size.”²² The increase in this population is credited to the arrival of the “baby boomers,”²³ who have reached the sixty-five plus mark. “Baby boomers” is a term used to describe the largest generation in the United States born between 1946 and 1964.²⁴ The term was first used to describe a baby boom following World War II in a Time Magazine news article documenting an increase in the nation's population in 1947.²⁵

Along with the baby boomers arrival to this new demographic, as of 2005, the fifteen to twenty nine year old age group saw a decrease in population, while all other older age groups experienced an increase.²⁶ Moreover, the migration of elderly individuals will ultimately cause additional issues that must be addressed by countries receiving an increase in immigrants. For example, in the United States, the elderly account for eleven percent of the foreign-born populations.²⁷ In 2008, Hispanic immigrants, in particular, made up 47% of the foreign elderly population.²⁸ The population is expected to quadruple by 2050, when older immigrants are expected to make up approximately sixteen million of the population within the United

22 THOMAS T. PERLS ET AL., *LIVING TO 100: LESSONS IN LIVING TO YOUR MAXIMUM POTENTIAL AT ANY AGE* xii (1999).

23 See HOGAN PEREZ, ET AL., *WHO (REALLY) ARE THE FIRST BABY BOOMERS?* (2008) (For additional information on “baby boomers”).

24 Carrie A. Werner, *The Older Population: 2010*, 2010, CENSUS BRIEFS, 4 n.6 (2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf>.

25 *The Economy: Baby Boom*, TIME MAGAZINE (Feb. 9, 1948), <http://content.time.com/time/subscriber/article/0,33009,856041,00.html> (last visited Sept. 19, 2012).

26 See *The European Labour Market in Light of Demographic Change*, EUROPA 7-8 (2000), https://ec.europa.eu/employment_social/soc-prot/ageing/labour_market/intro_en.htm [hereinafter *The European Labour Market*] for explanation of the decrease in numbers for this age group, known as “Generation Y,” may account to the previous generation's decision to not have children and pursue academic and professional goals.

27 Mark A. Leach, *America's Older Immigrants: A Profile*, 4 GENERATIONS 32, 34-39 (2008).

28 Jeanne Batalova & Aaron Terrazas, *Frequently Requested Statistics on Immigrants and Immigration in the United States in 2009*, MIGRATION POLICY INSTITUTE (Dec. 9, 2010), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2009#2e>.

States.²⁹ The influx of elderly immigrants will necessitate changes to meet these unique needs for this growing group.

This astronomic change in the world population challenges countries in meeting the necessities of this growing group of individuals. Preparing a strong foundation for this growing demographic will require the involvement of several players, including the global and regional community, the states, the private sector, non-governmental organizations, and the participation of individuals. Identifying the needs of this special group and enacting legislation and certain protections that will enhance their life is an impetus to ensuring the respect of these rights.³⁰

What constitutes as an elderly person relies on a variety of factors that are not limited to chronological age. It is common to hear how the perception of age has changed based on medical and technological advances assisting elderly individuals in mobility, mental clarity, and of course in physical health.³¹ Although there are different perceptions as to what elderly truly means, it is important to classify people in this category in order to assign rights and protections. Similar to the way a person's race or ethnicity is categorized to ensure protections, defining what is elderly is a relevant criterion.³² Just as certain characteristics shared by this group of individuals leads to the general perception of "elderly," such as loss of mobility, physical changes in appearance, changes in health, and diminished mental clarity and capacity, the labeling and generalization of individuals who may or may not comprise these characteristics, allows for special protections and rights.³³

In American culture, the age of sixty-five distinguishes the commencement of old age. The establishment of this demarcation was based on the American system's adoption of the social security system in the 1930s.³⁴ The American model for the social security system was founded on the first social welfare system, which was created in 1889

²⁹ Judith Treas & Jeanne Batalova, *Immigrants and Aging*, in INTERNATIONAL HANDBOOK OF POPULATION AGING 368 (Peter Uhlenberg ed., Springer 2009).

³⁰ Lynn McDonald, *Why More Pilot Studies of Elder Mistreatment Are Necessary*, INT'L HANDBOOK OF ELDER ABUSE AND MISTREATMENT 13-38 (2019).

³¹ Ronald W. Berkowsky, *Elder Mistreatment and Psychological Well-Being among Older Americans*, 17 INT. J. ENVIRON. RES. PUB. HEALTH 7527 (2020).

³² LAWRENCE A. FROLIK & ALISON BARNES, ELDER LAW: CASES AND MATERIALS 3 (4th ed., 2007).

³³ Nancy L. Falk, Judith Baigis, & Catharine Kopac, *Elder Mistreatment and the Elder Justice Act*, 17 ONLINE J. OF ISSUES IN NURSING (2012).

³⁴ Harrison Givens, Jr., *An Evaluation of Mandatory Retirement*, 52 ANNALS AM. ACAD. POL. & SOC. SCI. 50, 52 (1978).

by Germany's Chancellor Otto von Bismarck.³⁵ This revolutionary development spread across the country offering the first viable protection for the elderly and influencing changes for the older population. This first social welfare system established a forced retirement age and pension program providing for a fixed retirement age at sixty-five.³⁶ When the American system adopted and modified a similar social security system, the German model's mandatory age requirement was thereby incorporated. As such, the cultural perception of "old age" was established in the United States and internationally.³⁷

B. *Creating a Universal Definition of What is Elderly*

A definition of what is considered elderly has not been universally established nor accepted.³⁸ Historically, the age when a person will receive pension benefits has been the established demarcation for defining their status as elderly.³⁹ Internationally, countries that provide social welfare, generally established this age range between sixty and sixty-five years of age.⁴⁰ The UN has not implemented a standard criterion for other nations to follow, however it commonly accepted that anyone aged sixty and over, is considered to be a part of the elderly population.⁴¹ The fluctuating classification of age amongst countries reflects their political and economic changes and needs.⁴² The diverse needs of individuals, particularly in developing countries, has repeatedly led to an inability to establish a universal definition. Anthropological studies conducted in the 1970s seemingly sought to define old age in developing countries. Such international studies, including one

³⁵ Henry E. Sigerist, *From Bismarck to Beveridge: Developments and Trends in Social Security Legislation*, 20 J. PUB. HEALTH POL'Y, 474, 476, 491 (1999).

³⁶ LAWRENCE A. FROLIK & ALISON BARNES, *ELDER LAW: CASES AND MATERIALS* 3 (3rd ed., 2003).

³⁷ Vegard F. Skirbekk, Urusla M. Staudinger, & Joel E. Cohen, *How to Measure Population Aging? The Answer is Less than Obvious: A Review*, 65 GERONTOLOGY 136-144 (2018).

³⁸ The authors review of articles and studies has found an inconsistent definition of "elderly" amongst the international community. Cultural and societal factors appear to be the reason for the lack of consensus.

³⁹ Linton Weeks, *An Age-Old Problem: Who is Elderly?*, NPR (Mar. 14, 2013), <https://www.npr.org/2013/03/12/174124992/an-age-old-problem-who-is-elderly>.

⁴⁰ Mark Gorman, *Global Ageing-The Non-Governmental Organization Role in the Developing World*, 31 INT'L J. OF EPIDEMIOLOGY 782 (2002).

⁴¹ *Definition of an Older or Elderly Person*, WHO, <https://www.who.int/healthinfo/survey/ageingdefnolder/en/> (last visited May 17, 2019).

⁴² P. Thane, *The Muddled History of Retiring at 60 and 65*, 45 NEW SOC'Y 234, 234-236 (1978).

in particular looked at several areas in Africa and concluded that the definition of age is based on three categories: (1) chronology; (2) the person's change in society, specifically, work; and (3) an alteration in physical characteristics, such as mental impairment.⁴³ The conclusion from this cultural study indicated that the perception of old age is primarily defined by the individual's change in his or her social roles.⁴⁴ Based on the multiple definitions provided by theorists, studies, and international entities, it is evident that an established definition of "elderly" is needed to properly establish a working international document. As such, many factors will have to be considered in this daunting task, such as the political effects, the economic ramifications, physical and mental capabilities, and the societal perceptions; however, it is imperative that the select population is to be offered the requisite protections.

It can be concluded that old age can be a societal construct that is likely considered arbitrary, which should be supported by the physiological changes endured by the person, rather than the subjective needs of a country or society. Statistical factors take chronological age into consideration when providing reports on life expectancy, population, and research. However, in order to properly define "elderly," it is necessary to incorporate a variety of factors such as a person's chronological age, physical and mental health, the person's functional capacity, and social involvement.⁴⁵ Again, the union of these factors will not provide for the perfect canon of what classifies an individual as elderly, but will provide a general working definition that will better serve this group. For example, the traditional cultural view that the elderly stage of a person's life begins at age sixty-five may be changing. With the pending age of retirement for social security benefits moving to age sixty-seven, it appears that the sixty-five demarcation of elder hood may be faltering.⁴⁶ Since, technically speaking, humans age every day, the physiological appearance does not support the definition of elderly, proving that old age is considered a social perception and not universally associated. Ultimately the concrete qualities that define what is elderly should be established from a rights perspective, thereby establishing the unique qualities that affect that population at

⁴³ Anthony P. Glascock & Susan L. Feinman, *A Holocultural Analysis of Old Age*, 3 COMP. SOC. RES. 311 (1980).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Jean-Olivier Hairault, Thepthida Sopraseuth, & Francois Langot, *Distance to Retirement and Older Workers' Employment: The Case for Delaying the Retirement Age*, 8 J. EUROPEAN ECONOMIC ASSOC. 1034 (2010).

a particular time of their lives. It is best established that the elder group is a category of a population rather than a constituted group⁴⁷ within the general population. Unique needs within the population may therefore lead to the request that specific provisions be provided for specific issues, such as elder abuse, while others may wish for a general protective document that congregate with the primary needs and rights for the elderly.⁴⁸ Therefore, the concept of old age will always be a myriad of subjective and objective standards. The global community must progress towards the creation of a document that will provide a standard of protections and methods of implementation for any entity that breaches these fundamental human rights.

C. Unique Needs

The older generation brings with it a distinct set of human rights that are specific to the demographic group. Every individual has fundamental and theoretical human rights that are existent based on their common bonds as humans. Yet, the exclusive experiences or changes that occur during a group's human experience, elevates the need for a protection that addresses the sole experience endured during that point in human development.⁴⁹ It is indisputable that approaching one's elder years is a distinct experience only undergone by a select population. The inability to acknowledge the elemental needs of the elderly is what leads to a likelihood of breakdown when it comes to the protection of this population and the ultimate neglect in the creation of a human rights document.⁵⁰

Just as the needs of children and women are often neglected, the creation of a document specifically addressing elderly rights would hopefully validate the elderly population in having "distinct human rights that were not addressed specifically in the 1948 Universal Declaration of Human Rights or other relevant human rights instruments."⁵¹

⁴⁷ Frédéric Mégret, *The Human Rights of the Elderly: An Emerging Challenge* (Apr. 4, 2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1584303.

⁴⁸ BEYOND ELDER LAW: NEW DIRECTIONS IN LAW AND AGING (Israel Doron & Ann M. Soden eds., 2012).

⁴⁹ Marthe Fredvang & Simon Biggs, *The right of older persons: Protection and gaps under human rights law* (Social Policy Working Paper No. 16).

⁵⁰ John Williams, *When I'm Sixty Four: Lawyers, Law and 'Old Age'*, 34 CAMBRIAN L. REV. 103 (2003).

⁵¹ World Health Organization [WHO], *Status of Preparation of Publications, Studies and Documents for the World Conference*, U.N. Doc. 157/PC/61/Add.8 (1993).

Particularly important to older men and women, are issues related to healthcare, scientific research, asset protection, discrimination, government benefits, and criminal laws. The international community has not refuted the fact that the elderly has unique needs that must be addressed. The unique needs the elderly face include physical abuse, mental abuse, including bullying, discrimination, neglect, and financial exploitation.⁵² However, the needs that have been debated, relate more so to data and economic analysis, rather than the political, social, economic, and medical needs of the individual.⁵³

Included in these concerns, are the rights of older women. Older women are confronted with the inequity of both age and gender, thereby facing a unique subset of concerns. It is expected that older women will outnumber older men, thereby facing discrimination in a variety of areas, particularly when it comes to financial earnings, familial responsibilities,⁵⁴ and diminished government support.⁵⁵ Moreover, older women are consistently underrepresented within the area of medical research. For example, loss of income, status and property rights, and social stigmatization are a few of the economic and social distresses that women experience as they age.⁵⁶

Political underrepresentation is also a problem that is unsurprisingly present in many cultures around the world. The issues which are confronted by women in various countries may be different, however the common theme encountered by women, relates back to what roles are dominant in society and how that dichotomy hinders the advancement of the traditionally subordinate female roles.⁵⁷

D. Societal Perceptions of the Aged

The assumed ideal is for a significant portion of a population to achieve old age. Through the taking of vitamins, eating well,

⁵² *Elder Abuse and Neglect: In Search of Solutions*, AMERICAN PSYCHOLOGICAL ASSOCIATION <https://www.apa.org/pi/aging/resources/guides/elder-abuse> (last visited Mar. 15, 2020).

⁵³ Mégret, *supra* note 47.

⁵⁴ Report of the Second World Assembly on Ageing, at 6, 11, U.N. Doc. A/CONF. 197/9, (April 8-12, 2002).

⁵⁵ HelpAge International, *Equal Treatment, Equal Rights: Ten Actions to End Age Discrimination*, HELPAGE INT'L 1, 8 (Nov. 2001), <https://www.helpage.org/silo/files/equal-treatment-equal-rights-ten-actions-to-end-age-discrimination.pdf>.

⁵⁶ Lindsey Judge, *The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards*, GLOBALAG 1, 8 (Dec. 2008), <http://globalag.igc.org/elderrights/world/2008/internationallaw.pdf>.

⁵⁷ *Id.*

maintaining mental clarity, individuals seek to reach a certain ripe age, however, during their youth, the categorization of “elderly” can have a negative connotation that oftentimes leads to stereotypes. For example, in 1968, Dr. Robert N. Butler, the Director of the *National Institute on Aging*, coined the term “ageism.”⁵⁸ Dr. Butler defined ageism as the “systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this with skin color and gender. Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills.”⁵⁹

Through the establishment of this term, the reality of a legal foundation regarding the differential treatment endured by the elderly was validated. In the furtherance of his research, Dr. Butler stated that the discrimination endured by the elderly arises from the fear and resentment that younger populations harbor toward the elderly population.⁶⁰ It is feared for example that the that the elderly population will be an economic burden upon the younger generation, thereby leading to an “intergenerational conflict.”⁶¹ Additionally, the industrial age has precipitated this intergenerational conflict. The need for strong workers in the factories led to the gradual ousting of the elderly. The labor of older workers was viewed as less efficient and less essential for the family unit, which had previously been relied upon for the contributions of all family members, both young and old.⁶² This revamping of the workplace population changed the elderly person’s role within the spectrum of employment. Older individuals, who were told to retire, were seen as weaker both physically and mentally. The perception of age changed from one where all individuals contributed to the familial community and society, to one where the elderly person became a burden both on the family unit and the community.⁶³

Additionally, the negative characteristics of aging filtered into various social media outlets, further promoting the idea that “younger is better.” The idea that the elderly are impaired, incompetent, physically limited, and senile, are perceptions that that sociologists,

⁵⁸ W. Andrew Achenbaum, *From Ageism to the Longevity Revolution: Robert Butler, Pioneer*, 54 *THE GERONTOLOGIST* 1064 (2014).

⁵⁹ Robert N. Butler, *Dispelling Ageism: The Cross-Cutting Interventions*, *ANNALS AM. ACAD. POL. & SOC. SCI.* 138, 139 n. 2 (1989).

⁶⁰ *Id.* at 140–41.

⁶¹ *Id.*

⁶² See W. Andrew Achenbaum, *The Obsolescence of Old Age in America, 1865-1914*, *J. SOC. HIST.* 48 (1974), reprinted in MILDRED M. SELTZER ET AL., *SOCIAL PROBLEMS OF THE AGEING: READINGS* 26, 31 (Stephen D. Ruttere ed., 1978).

⁶³ JILL M. CHONODY & BARBRA TEATER, *SOCIAL WORK PRACTICE WITH OLDER ADULTS* (2018).

gerontologists, and psychologists have advanced.⁶⁴ The discrimination against the elderly, or ageism, has been shown to be more intricate than the discrimination experienced by other protected classes such as women, children, and the disabled.⁶⁵ Through the required commitment from the Second World Assembly, international reports submitted by countries have shown that the abuse, neglect, and discrimination encountered by the elderly is in fact a universal concern endured by all elderly people.⁶⁶ Reports submitted by countries, along with the ever growing globalization of society, affirms the need for a universal legal document, enumerating, protecting, and enforcing the rights of the elderly. Social gerontologists have evaluated how globalization has created an evident social responsibility transnationally.⁶⁷ The globalization of society brings to light the creation of a new impression of “active aging” and a definitive ideal of “citizenship” through the implementation of rights discourse.⁶⁸

Physical and mental decline has been repeatedly established in the medical community. As such, the medical profession has also promoted the discrimination of the elderly in our culture. Evident throughout the specialty of geriatrics, is the reluctance of medical professionals to specialize in the treatment of the elderly.⁶⁹ With an aging society and with nursing homes at the forefront of neglect, it is evident that long-term care is not often viewed as a way of promoting the medical profession, while numerous advertisements are centered on youth-promoting procedures and techniques.⁷⁰ The medical profession may appear to be promoting the health care of the elderly through studies that lengthen and enhance their lives, yet the failure of the professionals to work with this age group only endorses the negative perception that the elderly are somehow contaminated.

⁶⁴ Butler, *supra* note 59, at 6–10.

⁶⁵ See Mary E. Kite et al., *Attitudes Toward Younger and Older Adults: An Updated Meta-Analytic Review*, 61 J. SOC. ISSUES 241 (2004), reprinted in TODD D. NELSON ET AL., AGEISM: STEREOTYPING AND PREJUDICE AGAINST OLDER PERSONS 129 (2004).

⁶⁶ U.N. Secretary-General, *Follow-Up to the Second World Assembly on Ageing*, U.N. DOC. A/64/127 (July 6, 2009).

⁶⁷ Carroll L. Estes & Chris Phillipson, *The Globalization of Capital, the Welfare State, and Old Age Policy*, 32 INT'L J. HEALTH SERV. 279 (2002).

⁶⁸ Alan Walker, *A Strategy for Active Aging*, 55 INT'L SOC. SECURITY REV. 121 (2002).

⁶⁹ ERDMAN B. PALMORE, AGEISM: NEGATIVE AND POSITIVE (Bernard D. Starr series ed., Springer Series on Adulthood and Aging No. 25, 1990).

⁷⁰ Allison K. Hoffman, *Reimagining the Risk of Long-Term Care*, 16 YALE J. OF HEALTH POL'Y, L., & ETHICS 147 (2016).

III. CURRENT HUMAN RIGHTS INSTRUMENTS AND PROTECTIONS

Domestically, one can see that the elderly are seen as a commodity: a group of individuals that must be respected and protected. Social services in the form of pensions, welfare assistance, medical care insurance, unique tax deductions, initiation of community care centers and public transportation all offer the elderly individual the opportunity to maintain a basic lifestyle that provides diversion and entertainment and to maintain an active lifestyle. Legislation against discrimination in the workplace and the enactment of healthcare initiatives, provide the veneer that the elderly population is provided with innumerable rights. For example, the United States Age Discrimination Act provided protection against unjustified dismissal from the workplace based merely on age.⁷¹ This legislation is couched in civil rights initiatives, which gave rise to a significant amount of litigation. Although a strong legislative tool that has prevented several employers from unlawfully terminating individuals of a certain age, this and other domestic legislation lack the human rights aspect, as it focuses on the discrimination of the elderly.⁷²

The past decade has also seen a surge of interest in the creation of an international human rights convention related to the rights of the older person. The universal policy would not only benefit the international elderly community, but would also work to bind local and national governments. With the creation and adoption of the International Convention on the Rights of Person with Disabilities in 2007, an increased awareness of an existing void pertaining the protection of the elderly became even more apparent. As such, Human rights interest groups and international Non-Governmental Organizations, such as the International Federation on Aging, have worked towards the creation of a binding instrument that can be applied both universally and locally.⁷³

At the moment, the rights of the elderly are not addressed in any principal human rights instruments. In 2003, a study conducted by Diego Rodriguez-Pinzon and Claudia Martin described the normative

⁷¹ U.S. Equal Employment Opportunity Commission, *Age Discrimination*, <https://www.eeoc.gov/age-discrimination> (last visited Mar. 15, 2021).

⁷² Stuart Goosey, *Is age discrimination a less serious form of discrimination?*, 39 LEGAL STUDIES 533–49 (2019).

⁷³ Arlene S. Kanter, *The United Nations Convention on the Rights of Persons with Disabilities and Its Implications for the Rights of Elderly People Under International Law*, 25 GA. ST. U. L. REV. 527 (2009).

gap that existed in the study of, and the minimal protection of rights afforded to the elderly population.⁷⁴ Their empirical-legal findings determined that:

There are very few provisions in international law that directly address elderly rights. There are isolated efforts by certain international bodies to systematically refer to the rights of the elderly when interpreting their corresponding conventions

However, there is no specific international body with the mandate to focus on the rights of the elderly. Nor is there an elderly rights convention in place. It is in fact the vulnerable population that does not have a comprehensive and/or binding international instrument addressing their rights specifically.⁷⁵

It may be deduced that the International Covenant on Social and Economic Rights may include a brief protection for the elderly when discussing “social insurance,” which may be referring to a right to pensions. However, nowhere in the document is the elder population acknowledged. Moreover, regional instruments offer brief references to the rights of those who are aging. For example, Article 18(4) of the African Charter, declares that the aged must “have the right to special measures of protecting in keeping with their physical and moral needs.”⁷⁶ Other human rights instruments refer to elder rights in very broad terms, failing to enumerate protections for the population. As evidenced in Article 25 of the Charter of Fundamental Rights of the European Union, the article states that the members of the European Union “recognises and respects the rights of the elderly to live a life of dignity and independence and to participate in social and cultural life.”⁷⁷ Although reference to any protections for this population appear vague and extremely expansive within the human rights

⁷⁴ Diego Rodriguez-Pinzon, & Claudia Martin, *The International Human Rights Status of Elderly Persons*, 18 AM. U. INT'L L. REV. 915 (2003).

⁷⁵ *Id.*

⁷⁶ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, Art. 18 (4), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), <https://www.refworld.org/docid/3ae6b3630.html> (last visited Mar. 15, 2021).

⁷⁷ Charter of Fundamental Rights of the European Union, art. 25., 2000 O.J. (C364) (Dec. 18, 2000).

instruments previously mentioned, the rights of the aged have been steadily monitored and enforced throughout these nations.

IV. WHY A HUMAN RIGHTS CONVENTION?

Human rights documents have successfully addressed the rights and protections of distinct groups of individuals, such as women, children, persons with disabilities, migrant workers, and Indigenous peoples.⁷⁸ Select human rights conventions briefly address particular areas of human rights for the elderly, but no legally binding document has been created protecting the rights of the older person.⁷⁹ At the present time, a document that adequately addresses the rights of the elderly and provides the requisite protection for these rights, does not exist. Based on the distinctive needs of this expanding and neglected population, the global community must ask itself if the necessity to create an all-inclusive document that codifies the human rights of the older person should be established. Based on this growing population's expected global expansion, the answer is certainly yes. Moreover, it is imperative that elder law, which has flourished as a legal specialization in the last twenty or so years,⁸⁰ be codified internationally through the creation of a document that will protect the human rights of this growing group of individuals. The array of issues affecting the elderly must be addressed in a human rights convention, specifically demarcating the problems affecting the elderly, the rights that they warrant, and the protections which they should be afforded. The creation of a universally adopted international convention for the rights of the elderly will efficiently ensure that their rights are endorsed and advanced.

In 2009, based on the information that no binding document addressing the rights of the elderly existed, the UN Expert Group promoted the need for an international convention for the rights of the elderly. The UN Expert Group pronounced:

⁷⁸ See G.A. Res. 3318 (XXIX), Declaration on the Protection of Women and Children in Emergency and Armed Conflict (Dec. 14, 1974); see also G.A. Res. 44/25, Convention on the Rights of the Child (Sept. 2, 1990).

⁷⁹ See G.A. Res. 46/9, United Nations Principles for Older Persons (Dec. 16, 1991), <https://www.ohchr.org/en/professionalinterest/pages/universalhumanrightsstruments.aspx> (at Rights of Older Persons "United Nations Principles for Older Persons" hyperlink).

⁸⁰ Israel Doron, *Elder Law: Current Issues and Future Frontiers*, 3 EUR. J. AGEING 60, 60–66 (2006).

The UN Policy documents on aging and older persons provide a comprehensive treatment of issues and public policy strategies but as “soft law,” they contain no legally binding obligations and there are no sanctions for non-performance. Instead, they incorporate norms and perceptions, which governments agree to be guided by, but without any requirement to account for adherence.⁸¹

In support of the UN Expert Group’s position, an affirmation of the rights of the elderly would require a positive obligation from nations to ensure the enforcement and enjoyment of rights.⁸² As stated by Tang and Lee, an international convention would not place “negative obligations on the participating states, but would also lay down norms in order to assist older people to attain a status comparable with that of the rest of the population.”⁸³ The incorporation of international rights established by the treaty would be codified in national legislation. Just as the rights of children and women were changed by the respective international conventions, a document enforcing the rights of the elderly would also transform the treatment of the elderly on a global level. As the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) encouraged the enforcement of rights for women, thereby creating a “global legality”⁸⁴ of women’s rights, one may argue that a document identifying the rights of the elderly will have the same effect globally. Moreover, the creation of a convention on the rights of the elderly may generate global consent regarding the rights of the elderly, transforming the convention into customary international law, just as many have contended that the creation of the Convention on the Rights of the Child (CRC) has had.⁸⁵

As previously discussed, the rights of the elderly are multifaceted and complex. The rights range from existing fundamental rights, such

⁸¹ U.N. Dep’t of Econ. & Soc’l Affairs, Div. for Soc’l Pol. & Dev., *The Report of the Expert Group Meeting “Rights of Older Persons”* (2009).

⁸² Marthe Fredvang & Simon Biggs, *supra* note 49.

⁸³ Kwong-Leung Tand & Jik-Joen Lee, *Global Social Justice for Older People: The Case for an International Convention on the Rights of Older People*, 36 BRITISH J. SOC’L WORK 1135 (2006).

⁸⁴ Elizabeth M. Schneider, *Anna Hirsch Lecture: Transnational Law as a Domestic Resource: Thoughts on the Case of Women’s Rights*, 38 NEW ENG. L. REV. 689 (2004).

⁸⁵ Barbara Atwood, *The Voice of the Indian Child: Strengthening the Indian Child Welfare Act Through Children’s Participation*, 50 ARIZ. L. REV. 127 (2008).

as the right to privacy, and the inherent right to life, to the more emotional and psychological concerns of those participating in the community.⁸⁶ The rights the elder individual is entitled to can be organized as requiring the three Ps: protection, participation, and perception. The individual's right to feel safe and secure living within the community as a person of a particular age is fundamental when discussing human rights. The need to feel protected, not only physically, but also physiologically and emotionally, provides the aging person with reassurance and assists in preventing them from abuse and neglect. Participation in society enables the person to serve their community and the greater society as a whole. Through their participation, both the individual and those involved, benefit from the experiences and wisdom brought by the elderly individual's years of life experience.

In addition to remaining physically active through their participation, the elderly individual remains mentally astute and experiences the feeling of philanthropy through the giving of their time and resources. Perception refers to the changing of societal views associated with old age. Removing the discriminatory and degrading views of growing old, will therefore enhance the older population's life, while advancing society's progress in acquiring a unified perception of humanity. Below, the article outlines the specific issues facing the elderly population under the "three Ps," which are delineated.

V. PROTECTION

The most susceptible to encroachment is the elderly individual's right to be protected and feel secure from physical and mental abuse.⁸⁷ Fundamental to the security found in maintaining physical and mental health, is the need to have adequate health care. Globally, many countries have universal healthcare systems that provide some sort of health care for the elderly. However, with the increase in the elderly population, the uncertainty of the quality and duration of this coverage is uncertain. In the United States, the framework for a universal healthcare model, which is in its infancy, has been created and faces much debate.⁸⁸ However, it contains uncertainties regarding

⁸⁷ World Health Organization, *Elder Abuse*, WHO (Apr. 04, 2021), https://www.who.int/ageing/projects/elder_abuse/en/.

⁸⁸ Gabriel Zieff, Zachary Y. Kerr, Justin B. Moore, & Lee Stoner, *Universal Healthcare in the United States of America: A Healthy Debate*, 56 *MEDICINA* 580 (2020).

implementation and healthcare assistance.⁸⁹ Currently, the United States offers federal, and state subsidized healthcare options for the disabled, elderly, and indigent. However, this system also contains flaws, including increased healthcare costs and the saturation of the populations receiving such benefits.⁹⁰ Rights that merit discussion as related to the protection of the elderly population, include the fundamental right to life, adequate standards of living, physical and mental health protections, and protection from abuse and inhumane treatments.⁹¹ I begin the discussion below with the right to life.

A. Fundamental Right to Life

Two crucial factors affecting the elderly, relate to the concept of the fundamental right to life. The first pertains to the elderly individual who is convicted of a capital offense and who is facing the death penalty. The second principal relates to particular end of life issues for the terminally ill elderly patient. The notion of dying with dignity is constantly debated amongst international parties. Determining whether this right also provides the terminally ill older individual with the right to choose not to live, is another aspect that must be considered when drafting the provision.

Routinely, the right to life has been continually discussed as it relates to a convicted individual's right to life in lieu of capital punishment. However, within this fervent debate, the elderly incarcerated person has been neglected.⁹² Few international instruments address the elderly person's right to life, particularly as related to the prohibition regarding the imposition of capital punishment. The American Convention on Human Rights addresses in the prohibition of imposing the death penalty on individuals over the age of seventy in Article 4(5).⁹³ The Fourteenth Amendment of the United States Constitution, provides inalienable rights to those individuals that cannot care for

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ James Macinko, Flavia Cristina Drumond Andrade, Fabiola Bof de Andrade, & Maria Fernanda Lima-Costa, *Universal Health Coverage: Are Older Adults Being Left Behind? Evidence from Aging Cohorts in Twenty Three Countries*, 39 HEALTH SPENDING, MEDICAID & MORE (2020).

⁹² Zachary Psick, Cyrus Ahalt, Rebecca T. Brown, & Jonathan Simon, *Prison Boomers: Policy Implications of Aging Prison Populations*, 13 INT. J. PRISON HEALTH 57 (2017).

⁹³ American Convention of Human Rights, Pacts of San Jose, Costa Rica art. 4(5), Aug. 27, 1979 1114 U.N.T.S. 146.

themselves with the inherent protections and rights afforded to every individual.⁹⁴ This is a benefit provided by the state to preserve the dignity of an individual and the human rights afforded to all. However, despite the American Convention's prohibition, in 2006, a seventy-six-year-old physically infirm convict, Clarence Ray Allen, was executed in California.⁹⁵ Currently, there are over five men on California's death row over the age of seventy.⁹⁶

B. Adequate Standards of Living

Perhaps it is best to subscribe a separate portion of this discussion to the adequate standard of living, as the phrase encompasses the complete rights that should be afforded not only to the elderly, but to humanity as a whole. When stating that a group should have the right to an adequate standard of living, for example the right to healthcare, the right to housing, the right to employment, and the enhancement of earning potential, amongst many other rights.⁹⁷ However, for the purposes of discussing the protection that should be afforded to the elderly, the adequate standards of living will be addressed as a right within the broad "protection" section that will be referred to herein.

The right to have adequate shelter and food is an undeniable human right that is universal. In particular, in the UN Principles for Older Persons, the UN Human Rights Committee strongly supported the significance of the right to "adequate food, water, shelter, clothing and health care through the provisions of income, family and community support and self-help"⁹⁸ for all aged persons. Repeatedly, it is the obligation of the states to provide for an adequate standard of living, through housing and food, particularly when addressing the elderly

⁹⁴ U.S. CONST. amend. XIV, § 2.

⁹⁵ It should be noted that Allen's sentencing came in 1982 after he was convicted for ordering the murder of three witnesses in a burglary case he was involved in. Repeated clemency hearings were held arguing that Allen was too old and infirm to be put death. It was also argued that it would be "cruel and unusual punishment" to execute the disabled, diabetic, and wheelchair bound man.

⁹⁶ *Death Penalty Questioned for Elderly as New Records Set in Senior Executions*, SENIOR JOURNAL (Jan. 11, 2006), <https://web.archive.org/web/20130117195616/http://seniorjournal.com/NEWS/Features/6-01-11-DeathPenaltyQuestioned.htm>.

⁹⁷ Britta Baer, Anjana Bhushan, Hala Abou Taleb, Javier Vasquez, & Rebekah Thomas, *The Right to Health of Older People*, 56 THE GERONTOLOGIST S206 (2016).

⁹⁸ G.A. Res. 46/91, at 1 (Dec. 16, 1991).

person, who is unable to acquire food and shelter for themselves.⁹⁹ In addition, several human rights documents address the need to assist the elderly in obtaining the adequate standard of living that are required in order to enjoy the additional human rights.

In particular, Article 25 of the Universal Declaration of Human Rights, Article 11(2) of the ICESCR and Article 17 of the Additional Protocol to the American Convention in the Inter-American Human Rights System, all call for the providing of adequate food provisions, particularly when the elderly person is unable to obtain it for themselves. Just as the dietary needs of children are unique to the adult population, so too are the nutritional needs of the aged person.¹⁰⁰ It is necessary to ensure that the availability of food not only meets the quantitative need for the population, but also that the requisite quality must be present in order to satisfactorily meet the dietary need of that individual.¹⁰¹

The accessibility of food must further be differentiated as being economically and physically accessible. Economic accessibility requires food to be made available to the elderly who are financially challenged by ensuring that the cost of the quality food does not affect the right of the aged person from receiving the food, nor that it infringes on any other basic human right.¹⁰² Concurrently, the physical accessibility of food relates to the elderly population's ability to obtain the food, particularly if they are physically challenged or vulnerable for any other reasons. If the elderly person is in a specific physical disadvantage in comparison to his or her elderly peer, the person should be provided with a specific priority in the obtaining of nutrition.¹⁰³ Any violation in the refusal to provide economic or physical accessibility to food based on the age of the intended recipient, would therefore result in a violation of the Covenant by the state party.¹⁰⁴

The state's meeting the aged person's right to an adequate standard of living also includes the right to adequate care. Adequate care can be described as the intake of nutritional value that assists the

⁹⁹ See International Covenant on Economic, Social and Cultural Rights art. 11.2, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); G.A. Res. 217A (III) U.N. Doc. A/810, art 17, at 71 (Dec. 8, 1948).

¹⁰⁰ See Right to Adequate Food (Art. 11): CESCR General Comment 12, U.N. OHCHR, Econ., Soc., & Cultural Rts. Comm., 20th Sess., U.N. DOC. E/C.12/1999/5, at para. 8 (1999).

¹⁰¹ *Id.*

¹⁰² See *id.* at para. 13.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at para. 18.

individual in living a healthy lifestyle, which in turn promotes the adequate standard of living. Additionally, another issue that most third world countries experience is the lack of clean water. As previously referred to, while meeting nutritional needs of children, adults and the elderly are seemingly important to all and it is therefore particularly important to meet the nutritional needs of the elderly based on their unique physical needs. As such, ensuring that the food intake has adequate vitamins and nutrients is essential in the securing of healthy living in the elder years. Providing a formulated national food program is required by the states to ensure that the elderly have access to such food and a guarantee that third parties do not infringe upon this right.¹⁰⁵ The Committee discussed that this plan must be culturally specific in order to meet the needs of that particular state and its population.¹⁰⁶

Ensuring that the rights are enumerated is one significant obstacle that must be overcome and commended when enacted, however, it is also necessary for the state actor to provide for the protection and enforcement of this and other rights. Other rights include the right against discrimination based on age and gender, access to end of life care and protection from abuse, along with the right to be free from exploitation. While this list is not exhaustive of the right afforded to the elderly, it is a starting point by which to ensure policies enacted have an outline of the issues important to this group. Special protections for this vulnerable elderly group must be provided priorities when it applies to judicial review and protection.¹⁰⁷ Remedies in the form of restitution, satisfaction or compensation, to name just a few, are amongst the recommendations made by the Committee upon the creation of an enforcement provision.¹⁰⁸ The success of any human rights document closely relates to the enforcement provisions made by the parties.

An additional component to the adequate standard of living for the elderly population is the importance of housing. The Committee has acknowledged the differences in economic, social, and cultural factors of the international state parties. The Committee established that particular provisions must be included in national housing plans

¹⁰⁵ *See id.* at para. 39.

¹⁰⁶ *See* Right to Adequate Food (Art. 11): CESCR General Comment 12, U.N. OHCHR, Econ., Soc., & Cultural Rts. Comm., 20th Sess., U.N. DOC. E/C. 12/1999/5, at para. 8 (1999).

¹⁰⁷ *Id.* at para. 28.

¹⁰⁸ *See id.* at para. 32.

to secure adequate housing.¹⁰⁹ It is well understood that each state party encompasses a unique set of features that will require specific and unique provisions that will assist the elderly, while addressing the state's social, economic, and cultural factors.¹¹⁰ The availability of a secure place of residence contributes greatly to the physical and mental well-being of an individual. Although the ICESCR is silent concerning the right to housing, it is widely understood within the international human rights community that the right is intrinsic when referring to an adequate standard of living.¹¹¹ Incorporated within the concept of adequate housing, is the ability to live in a place or manner where the person is secure and is afforded peace and dignity. It is important to note that housing rights should be afforded to the elderly, not just the right to shelter in order for the state to ensure that the right is properly employed.¹¹² "[R]egardless of age, economic status, group or other affiliation or status and other factors," everyone is entitled to adequate housing.¹¹³ Discrimination of this kind would be a violation of the right to adequate housing, which is distinctly affiliated with other human rights.¹¹⁴ The Committee has stated that the right to adequate housing is connected to traditional civil and political rights, such as the freedom of expression, thereby requiring the fulfillment of this right in order to realize other important rights.¹¹⁵

In order to meet the right to adequate housing, the Committee enumerated the seven categories that must be provided in order to ensure that complete legal protection is enjoyed by the elderly. The first

¹⁰⁹ Right to Adequate Housing, art. 11(1), CESCR General Comment 4, U.N. OHCHR, Econ., Soc., & Cultural Rts. Comm., 6th Sess., U.N. DOC. IIRI/Gen/1/Rev.1, at 53, para. 8 (1994), <http://www1.umn.edu/humanrts/gen-comm/epcomm4.htm>.

¹¹⁰ *Id.* at para. 8(a) (the Committee report addresses that besides social, economic, and cultural elements, the state's climatic, ecological, and other actors must be considered. Yet, the Committee believes that it is feasible for the state to identify and implement the right of adequate housing).

¹¹¹ See Comm'n on Human Rights, Sub-Comm. on Prevention of Discrimination and Prot. of Minorities, The Realization of Economic, Social and Cultural Rights, E/CN. 4/Sub.2 (1999); See also Revised European Social Charter, Eur., May 3, 1996, C.E.T.S. No. 163 (addressing the right to housing as applied to the elderly).

¹¹² James v. United Kingdom, App. No. 8793/79 Eur. Ct. H.R. (1986).

¹¹³ Right to Adequate Housing, art. 11(1), CESCR General Comment 4, U.N. OHCHR, Econ., Soc., & Cultural Rts. Comm., 6th Sess., U.N. DOC. IIRI/Gen/1/Rev.1, at para. 6 (1994).

¹¹⁴ *Id.* at para. 7 (the Committee's view, "the right to housing should not be interpreted in a narrow or restrictive sense . . . it should be seen as a right to live somewhere in security, peace and dignity.").

¹¹⁵ *Id.* at para. 9.

category relates to the legal security of tenure.¹¹⁶ The elderly are to feel secure while sheltered, and free from worries of forced eviction, threats or any form of harassment.¹¹⁷ It is imperative that all states ensure legal protections to any person who is deprived of this protection and take “immediate measures”¹¹⁸ therein. The second category relates to the availability of “services, materials, facilities and infrastructure.”¹¹⁹

C. *Physical and Mental Medical Protections*

Many different factors that affect the elderly require codification in order to provide the most universal protection. Factors that must be addressed should include special health issues that are often neglected, but do affect the elderly in increasingly numbers, such as HIV/AIDS.¹²⁰ In an analysis by HelpAge International of twenty-five core indicators established by the Monitoring and Evaluation Reference Group of UNAIDS, it was determined that people aged fifty and over, were excluded from the examination and reporting.¹²¹ The exclusion of this group has impeded the progress of assisting this age group in the treatment and success of treating HIV/AIDS.¹²² The discrimination faced by the elderly prevents them from receiving medical assistance and funding for research. Simple failure to provide adequate information to the fifty and older age group through informational campaigns are denied the proper education to prevent the disease. It is extremely important that this population be provided resources such as funding and medical assistance in order to treat their disease considering that these individuals serve as caregivers to their family and children.¹²³

¹¹⁶ *Id.*

¹¹⁷ *Id.* at para. 8(a).

¹¹⁸ *Id.*

¹¹⁹ *Id.* at para. 8(b).

¹²⁰ Susan L. Waysdorf, *The Aging of the AIDS Epidemic: Emerging Legal and Public Health Issues for Elderly Persons Living with HIV/AIDS*, 10 *ELDER L.J.* 47 (2002).

¹²¹ *UNGASS Indicators: Where Are the Over-50s?*, HELPAGE INTERNATIONAL 1 (June 2008), <http://globalag.igc.org/health/world/2008/UNGASSbriefing.pdf>.

¹²² *Id.*

¹²³ *Id.* at 3.

VI. CALL FOR A SPECIAL DOCUMENT FOR THE PROTECTION OF THE ELDERLY

The need for a human rights convention that will protect the rights of the elderly must serve the distinct rights of this special and growing population. The convention must establish the special needs and concerns that affect the elderly. The rights that are codified must create an obligatory law that will bind the international community, eliminating any gaps that currently exist in the global community. The inclusion of rights that have previously been excluded from documents, recommendations, or disregarded as an issue affecting the elderly, must be included to ensure a complete document protecting every facet of the elder individual's life. Physical protections will serve as a great benefit to the elderly person, but the emotional empowerment created by the rights and principles of the proposed framework will enhance the life of the protected and benefit the global community. Raising community awareness regarding the vast array of issues affecting the elderly will promote social protections, such as local legal protections, promote health care research and implementation and prevent physical abuse. Moreover, the document must address the preservation of dignity as related to both economic protections, and healthcare decisions. The discrimination facing specific subgroups of elderly individuals, such as women, requires a specific provision of distinction and protection. In order for the document to be all inclusive, the array of global human rights contributors must be referenced, including member states, NGOs, private sectors, and most importantly, the elderly population. Implementation of a punitive source must be carefully and meticulously established, in order to create a strong document, which will have the power of force behind its established terms and protections.

The creation and implementation of a human rights document protecting the unique rights of the elderly will empower this population by changing social misperceptions and ensure that the global community takes accountability for the protection of the elderly. The establishment of a universal convention on the rights of the older person will strive towards dispelling ageism and discrimination both locally and universally. No efficient protections currently exist for expanding the rights of the aging population. As such, it is crucial that a universal human rights instrument be drafted addressing the comprehensive needs of the elderly.

A. *Elder Rights and the International Legal Community*

The creation of an international treaty protecting the human rights of a particular group always leads to the modification of a ratifying or acceding state's existing national laws and legislation. The ratification of an international document brings with it, monumental change not only for the group of protected people, but also the nation agreeing to enact these changes. Although binding treaties provide more authority to ensure the enforcement of the rights and subsequent consequences, non-binding instruments such as declarations and resolutions can be effective in modifying the governmental and societal practices through the employing of international peer pressure.¹²⁴ The peer pressure utilized may serve as a catalyst for the non-acquiescing nation to make modifications to their legislation, national laws, or acceptance of commitments in order to prevent a negative connotation in the international community.¹²⁵

B. *The Convention on Elder Rights Paradigm*

The grouping of elder law with the disabled is commonly evidenced in international documents, legislation, and nongovernmental organizations. Many United States bar associations and law firms combine elder law and disability rights into one section, which serves both parties.¹²⁶ The perception that the elderly are disabled, is one hurdle that must be overcome. Just as the disabled person may be mentally or physically capable in other areas, so too is the elderly individual. Placing the elderly population in the same category as the disabled, stigmatizes, and actually affirms, the misconception that to be older is to be disabled.¹²⁷ Ensuring that the elderly are provided their own human rights convention, advocacy group, and general support system, changes the perception of the elderly person, thereby "humanizing" the elderly population as a subset of the human population, not castoffs seen as a burden upon the younger generation. Addressing and defining the unique needs of the elderly along with establishing the specific protections required for this population will ensure the

¹²⁴ Andrew T. Guzman & Timothy L. Meyer, *International Soft Law*, 2 J. OF LEGAL ANALYSIS 171 (2010).

¹²⁵ *Id.*

¹²⁶ See generally THE ELDER & DISABILITY LAW CENTER, <https://www.edlc.com/> (last visited Mar. 15, 2021).

¹²⁷ Leslie Pickering Francis & Anita Silvers, *Brining Age Discrimination and Disability Discrimination Together: Too Few Intersections, Too Many Interstices*, 11 MARQUETTE ELDER'S ADVISOR 140 (2012).

proper regulations that will minimize the elderly from the vulnerable categorization to a more empowered group. Therefore, it is essential that the human rights document created for the purpose of protecting the rights of the elderly includes the enumerated indivisible, interdependent, and interrelated human rights provisions.

The unprecedented occurrences of the global pandemic brought to the forefront the disparate treatment of the elderly.¹²⁸ The elderly were isolated from family and caregivers as the pandemic lockdowns began. With minimal access to family members, the elderly were susceptible to abuse and lack of medical care. Social isolation was the greatest risk factor for abuse of the elderly.¹²⁹ The vulnerability of this population and the lack of policies and protections on medical support validates the need for a more universal protection now, as well as post-pandemic. The renewed urgency to protect the rights of the elderly against abuse, neglect, disparate health care, can be the best thing to result from the pandemic. The United States and international community must take a responsive approach to implement and ensure the future of the elderly community.

VII. CONCLUSION

Undoubtedly, the elderly population remains a vulnerable group requiring protections against an array of abuses. The abuses suffered by the elderly include physical and mental abuse, neglect, and exploitation. While this is select list of abuses suffered by the elderly, it remains a starting point for state and federal legislators to begin enacting laws. Significant variations domestically exist with states addressing the issue disproportionately. Referring to international charters can provide a foundation on improving the legal protections in the United States, thereby creating a uniform legislative protection.

As the elderly population increases, implementation of laws, as well as the support for caregivers is imperative in ensuring changes in the legal protections of the elderly. While this may require significant financial investment in resources, enactments by the Department of Justice and support by professional organizations, such as the American Bar Association, can ensure the effective implementation of protections. Focusing on intervening and preventing elder abuse through

¹²⁸ S. Duke Han & Laura Mosqueda, *Elder Abuse in the COVID-19 Era*, 68 (7) J. OF AM. GERIATRICS SOC'Y, 1386-87 (July 2020).

¹²⁹ *Id.*

legal protections, community resources, and awareness, will minimize this public health concern and offer the support necessary for both caregivers and the elderly.