GUIDING QUESTIONS AND ANSWERS FOR THE NORMATIVE FRAMEWORK OF THE ISSUES EXAMINED AT THE IX SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING:

Long-Term Care and Palliative Care

## National Legal Framework: The Legal Provisions in South Korea to Recognize the Right to Long-Term and Palliative Care

1. **Constitutional Level**
* Constitution of the Republic of Korea

->Article 10 All citizens shall be assured of human worth and dignity and have the right to pursuit of happiness.

1. **Legislative Level**

## Act on Decisions on Life-Sustaining Treatment for Patients in Hospice and Palliative Care or at the End of Life [Enforcement Date 27. Mar, 2018.] [Act No.15542, 27. Mar, 2018., Partial Amendment]

## Long-Term Care Insurance Act [Enforcement Date 15. Jan, 2019.] [Act No.16243, 15. Jan, 2019., Partial Amendment]

## Welfare of Older Persons Act [Enforcement Date 15. Jan, 2019.] [Act No.16243, 15. Jan, 2019., Partial Amendment]

## Normative Elements: Normative Elements of the Rights to Long-Term Care and Palliative Care to Provide References and Standards

* The right to be assured of human worth and dignity in end of life care
* The right to receive appropriate counseling and guidance for long-term care and palliative care.
* The right to be assured of being free from the pain.
* The right to decide the place of dying to support/help the older persons.

 **1.Universal Declaration of Human Rights**

**->**Article 6 Everyone has the right to recognition everywhere as a person before the law.

 **2.Core International Human Rights Treaties**

 2.1 International Covenant on Civil and Political Rights (ICCPR)

->Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

 2.2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

->Article 12 (1). The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2.3. Convention on the Rights of Persons with Disabilities

## ->Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

## ->Article 25 Health

 **3. UN Report and Regional Conference**

3.1. Madrid International Plan of Action on Ageing

->Issue 2: Universal and equal access to health-care services -70, 74 Action (d)

 3.2. United Nations Principles for older persons-

->Care 13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.

 3.3. Inter-American Convention on Protecting the Human Rights of Older Persons

->Article 6 Right to life and dignity in old age

->Article 11 Right to give free and informed consent on health matters

->Article 12 Rights of older persons receiving long-term care

->Article 19 Right to health

 3.4. African Charter on Human and Peoples’ Rights

->Article 16 1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

## Implementation: Best Practices and Main Challenges to Implement the Right to Long-Term-Care and Palliative Care.

 **1. Best Practices**

## Adopt the measures regarding the right to receive hospice and palliative care with the national hospice care plan.

## Adopt the measures regarding the right to receive long-term care with long-term care insurance

## Adopt the measures to operate hospice care in medical welfare facilities for older person

## 2. Main Challenges

* Prohibited choices and options for older persons to access hospice services to ensure dignity and end of life care (currently adopted 4 diseases for hospice insurance plan: Cancer, AIDS, Chronic obstructive respiratory disease, and Chronic liver cirrhosis[[1]](#footnote-1))
* Prohibited choices and options for older persons to access hospice services in the intermediate care hospitals (currently designated for written advance statements with only 11 out of 1529 intermediate care hospitals[[2]](#footnote-2)).
* Prohibited choices and options for older persons to access home hospice (currently designated agencies for 99 Hospital hospices, 25 counsel hospices and 33 home hospices[[3]](#footnote-3))

## Equality and non-discrimination: Older persons not enjoyment to the rights to long-term care and palliative care in the vulnerable situations

* With prohibited of the right to hospice and palliative care in long-term care facilities.

Older persons are placing in vulnerable situation with delaying to sign for long-term and palliative care in a medical condition that prevents them from expressing their intention, living in rural areas not in services; diagnosing with non-designated disease for hospice and palliative care, being with dementia, being with multiple condition by mental and disability, and placing in prison.

## Accountability: Judicial and Non-Judicial Mechanisms to Redress the Rights to Long-Term- Care and Palliative Care

1. **Judicial Mechanisms**
* Legislation for amendment for Act on Decisions on Life-Sustaining Treatment for Patients in Hospice and Palliative Care or at the End of Life; Long-Term Care Insurance Act
1. **Non-Judicial Mechanisms**
* Exercise civic movements to engage older persons’ full enjoyment of the right to long-term care and palliative care from the level of national, regional and community.
* Campaign action for awareness of hospice and palliative care for older persons, families, health care professionals, and general publics.
* Promote the right to education for “well-dying” from life-course perspective (currently 30.8% of older persons answered that hospice service is insufficient in the society to compare with 49.4% of young and middle-aged persons).[[4]](#footnote-4)
* Organizing multi-stakeholders events to discuss the rights by the national and international normal elements of human rights perspective.
1. https://lst.go.kr/medi/composableorgan.do [↑](#footnote-ref-1)
2. https://lst.go.kr/medi/composableorgan.do [↑](#footnote-ref-2)
3. https://lst.go.kr/medi/composableorgan.do [↑](#footnote-ref-3)
4. https://www.humanrights.go.kr/ezpdf/customLayout.jsp?encdata=0D7B46D1D35E32531C97F3A723AB28689C3721EE62B784ED42C56510A003811E617EAD152899E52852CB5F486516C2B1F17F9E59C48C68DA6FE55F8A54C867401FB1201771C712189362BE6DEE07078DC71C40E7E4D7377B6C4A9CCE2C8B0185F3004098C91EF331FB177297B7DA8C7C4FFE9F300987D2994F43628C52A8F26C74484CB71D421A8F5AA4D4F47E70950144575271AD0887B8BD3F095182F210DB5B00F5FD41B0997C [↑](#footnote-ref-4)