

**Written Submission to the twelfth session of the
General Assembly Open-Ended Working Group for
the purpose of strengthening the protection of the
human rights of older persons**

National Human Rights Commission of Korea

February 2022



1. Written contribution in response to Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

< Right to work and access to the labor market >

Definition

1. How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?

◦ Provision on age

- 「The Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion Act」 (hereinafter referred to as “the Elderly Act”) defines the older person as person aged 55 or older.

◦ Accessibility to the labor market

- The above act stipulates that the Minister of Employment and Labor shall formulate “a basic plan for promoting the employment of the older persons” every five years and conduct training for developing vocational skills and adaptation aiming at the older persons to enhance labor market accessibility of the older persons.

Scope of the right

2. What are the key normative elements of the right to work and access to the labor market for older persons? Please provide references to existing standards on elements such as:

a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to employment.

- The “Elderly Act” stipulates that the government, as its obligations, shall establish policies to prohibit age discrimination for the purposes of correcting discriminatory practices against the older persons in employment and that the employers shall endeavor to rectify age discrimination in employment, provide the older persons with employment opportunities suited to their abilities by developing and elevating their vocational skills and by improving work process.

b) Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.

- It is prescribed under Article 4 (4) (prohibition on age discrimination) of the Elderly Act that employers shall not discriminate on the grounds of age without justifiable grounds in the following areas: 1. Recruitment and employment; 2. Salary, provision of money and valuables other than salary, or other welfare benefits; 3. Education and training; 4. Placement, transfer, or promotion; 5. Retirement or dismissal.

c) Provision of reasonable accommodation to older persons in the workplace.

- Article 8(2) of the Elderly Act stipulates that in cases where any employer improves his/her facilities so as to make them suitable for the employment of the older persons, the Minister of Employment and Labor may subsidize the whole or part of such expense, supporting provision of reasonable accommodation for the older persons at the workplace.

d) Affirmative action programs to promote the hiring of older persons.

- Article 15 of the Elderly Act stipulates that the Minister of Employment and Labor shall select types of occupation suitable for employment of the older persons and the middle-aged (hereinafter referred to as “preferred occupational types”) by undergoing deliberation by the Employment Policy Deliberative Council, and as for the preferred occupational types, occupations such as medical welfare-related service workers, vocational counselors and employment mediators and helpers in child care facilities are designated.

e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.

◦ Article 6 of the Elderly Act prescribes training for developing vocational skills of the older persons, and Article 9 stipulates employment mediation of the older persons.

i) Access to prompt remedies and redress when older persons' right to work and access to the labor market is denied

◦ The Elderly Act includes provisions on imposition of penalties and fines in cases of violation of obligations of employers stipulated under the act, and there are administrative and judicial remedial procedures in place including complaint to the Ministry of Employment and Labor

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labor market for older persons, regarding the normative elements as provided above?

◦ Articles 3 and 5 to 11 of the Elderly Act stipulate government's obligations to promote employment of the older persons and guarantee of their right to work. It is stipulated that the government shall establish and implement policies to prohibit age discrimination to correct discriminatory practices against the older persons. It also stipulates government's obligations concerning collection of information on job offers and job seeking, training for developing vocational skills of the older persons, provision of various supports for employers and employment mediation for the older persons.

Special considerations

4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?

- In the process of increasing labor market flexibility, the number of non-regular workers has increased, and the types of employment has diversified. And women and the older persons, etc. are more vulnerable to employment instability issues such as outsourcing services and the recent spread of platform labor.
- Older workers represent disadvantaged working poor in the society, and the overall working conditions for them are unfortunate, for example, low wages at the minimum wage level, employment insecurity, and impersonal treatment in the process of labor service. Accordingly, it is necessary to further strengthen the labor supervision by administrative authorities to enforce strict compliance of labor-related laws such as the Labor Standards Act and Minimum Wage Act.

5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labour market for older persons?

- Article 4 of the Elderly Act stipulates that the employer shall endeavor to rectify discrimination based on age and expand employment of the older persons by providing the older persons with employment opportunities suited to their abilities and extending their retirement age.

< Access to justice >

Definition

1. What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

- In 1986, the Legal Aid Act was enacted for the purpose of protecting human rights of the socially and economically vulnerable people and providing legal aid for them, and the government (Ministry of Justice) established the Korea Legal Aid Corporation to provide cost-free legal counseling on overall legal issues to the public including the older persons and foreigners residing in Korea. In addition, socially vulnerable people can receive attorney service at affordable expense for civil, family, administrative and constitutional cases, and free defense for criminal cases.
- Everyone including the older persons can receive judicial remedy such as compensation for damage and national reparation claims. Under the non-judicial system, a complaint can be submitted to the National Human Rights Commission of Korea to receive remedy in cases of human rights violations and discrimination.
- In particular, the abused older persons may request for protection from the Elder Protection Agency established under Article 39(5) of the Welfare of Senior Citizens Act.

Scope of the right

2. What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements:

- (a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;
- Discrimination based on age is prohibited under the National Human Rights Commission of Korea Act and the Elderly Act, and the access of the older persons to remedy is also protected under those acts.

State obligations

3. What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the right?

- The Korea Elder Protection Agency oversees protection of human rights of the older persons, receiving elderly abuse complaints and providing counselling; the Korea Federation of Senior Welfare is responsible for providing guidance on housing and medical welfare facilities for the older persons; and the Korea Senior's Hotline provides counseling concerning employment, health, and legal issues.
- In addition, remedy can be received by the National Human Rights Commission of Korea for human rights violations and discrimination and by the National Labor Relations Commission through its dispute resolution process for violation of labor rights of the older persons.

Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons?

- “Village Lawyer” and “Legal Home Doctor” services are implemented to help people in marginalized areas and economically vulnerable people. People residing in area where it is difficult to visit a lawyer can receive legal counseling from a village lawyer assigned to each village, and for those who have difficulty visiting lawyers in person, such as the older persons living alone, recipients of basic livelihood subsidies and residents in rural area, legal home doctors visit them to provide legal services.

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< Contribution of older persons to sustainable development >

National legal and policy framework

3. What data, statistics and research are available regarding older persons' contribution to sustainable development?

◦ The 'discrimination experience over the past year' of the National Human Rights Survey* is utilized as an indicator for N.10 Reduced Inequalities and N.16 Peace, Justice, and Strong Institutions of the SDGs.**

* The National Human Rights Survey is a national statistic (No.129001) conducted on individuals aged 19 or older, and it identifies the overall human rights status including opinions on human rights issues as well as experience of human rights violations and discriminations.

** Refer to Korea's SDGs Data Platform(<https://kostat-sdg-kor.github.io/sdg-indicators/>)

Remedies and redress

5. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to participate in and contribute to sustainable development?

◦ Pursuant to the National Human Rights Commission of Korea Act, where any of the human rights guaranteed in Articles 10 through 22 of the Constitution has been violated or a discriminatory act has been committed in connection with the performance of duties by a State agency, a local government, a public service-related organization or a confinement or caring facility; or where a discriminatory act has been committed by a juristic person, an organization or a private individual based on age without justifiable grounds in employment, good

and services and use of educational facilities, the victim or any other person aware of such violation or discrimination may file a complaint to the Commission and request for remedy.

- Moreover, most of employment discrimination issues based on age is addressed under the jurisdiction of the Ministry of Employment and Labor according to the Elderly Act.

< Economic security >

National legal and policy framework

3. What are challenges faced by older persons living in poverty, including the impact of intersectional discrimination and inequality based on age, gender and other grounds?

- According to the National Human Rights Survey conducted on individuals aged 19 or older by the National Human Rights Commission, the proportion of those in their 60s or older who have experienced discrimination based on economic status (jobs or income, etc.) over the past year is lower than other age brackets.

Category	2019	2020	2021
Total	10.3	13.0	6.2
Under 20's	10.3	14.7	6.8
30's	13.3	15.7	9.1
40's	12.6	14.3	6.8
50's	10.2	14.3	6.5
60's and older	6.5	8.6	3.5

- ※ Refer to the “Poverty Statistical Yearbook” published by the Korea Institute for Health and Social Affairs for statistics concerning elderly poverty.

Equality and non-discrimination

8. What measures are being taken to eliminate ageism and discrimination based on age that prevent older persons to access economic and other productive resources, including financial services, land, adequate housing and the right to inheritance?

- Article 2 (3) of the National Human Rights Commission of Korea Act stipulates that the term "discriminatory act violating the equal right" means an act of favorably

treating, excluding, discriminating against or unfavorably treating a particular person regarding employment (including recruitment, appointment, education, posting, promotion, payment of wage and any other money or valuables, financing, age limit, retirement, dismissal, etc.) without justifiable grounds, on the ground of age, etc.

- Article 7 of the Framework Act on Employment Policy stipulates that in recruiting and employing workers, business owners shall not discriminate against them on grounds of gender, religion, age, physical conditions, social status, place of birth, level of education, educational background, marriage, pregnancy, medical history, etc. without justifiable grounds and shall guarantee equal employment opportunities.
- Article 4(4) of the Elderly Act stipulates that employers shall not discriminate against any of their workers or any person who wishes to work for them, on the grounds of age without justifiable grounds in recruitment and employment, etc.

Remedies and redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their economic security and enjoyment of the right to an adequate standard of living?

- In cases of human rights violations or discrimination, a complaint can be filed to the National Human Rights Commission of Korea, and the Commission provides recommendation for remedies where human rights violations and discrimination are found through investigation. The Commission also endeavors to improve human rights of the vulnerable including the older persons through fact-finding surveys and policy recommendations.