

The Inter-American Convention for the Protection of the Human Rights of Senior Adults and its relation to Bioethics.

La Convención Interamericana para la Protección de los Derechos Humanos de las Personas Mayores y su relación con la Bioética

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Abstract:

In a global context marked by population aging, the protection of the human rights of older persons has become essential. The Inter-American Convention on the Protection of the Human Rights of Older Persons emerges as the first international treaty to recognize specific rights for this age group, addressing their vulnerability through a specialized legal framework. This document analyzes the origin, evolution, and content of the Convention, highlighting its relationship with the principles of **bioethics**—autonomy, beneficence, non-maleficence, and justice—particularly in the field of healthcare. It also examines its incorporation into the Mexican legal system and its value as a tool to ensure the dignity, autonomy, and well-being of older adults. Finally, it emphasizes the importance of its ethical and legal implementation as part of the commitment of OAS member states to promote a dignified, active, and protected old age.

Keywords:

Human Rights. Senior Adults. Legislation. Bioethics. Aging.

Resumen:

En un contexto global marcado por el envejecimiento poblacional, la protección de los derechos humanos de las personas mayores se vuelve imperativa. La **Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores** surge como el primer tratado internacional en reconocer derechos específicos para este grupo etario, respondiendo a su situación de vulnerabilidad mediante un marco jurídico especializado. El documento analiza el origen, evolución y contenido de esta Convención, destacando su relación con los principios de la **bioética** —autonomía, beneficencia, no maleficencia y justicia—, particularmente en el ámbito de la atención sanitaria. Asimismo, se expone su incorporación al orden jurídico mexicano y su valor como instrumento para garantizar la dignidad, autonomía y bienestar de las personas mayores. Finalmente, se subraya la importancia de su implementación ética y jurídica como parte del compromiso de los Estados miembros de la OEA para fortalecer una vejez digna, activa y protegida.

Palabras Clave:

Derechos Humanos. Persona Adulta Mayor. Legislación. Bioética. Envejecimiento.

INTRODUCTION

In a world that is facing the challenge of an aging population, protecting the human rights of senior adults has become a global priority.

The Inter-American Convention on the Protection of Human Rights of Seniors is a fundamental document that warrants the dignity and autonomy of this age group.

If human rights are universal, that means for everyone the vulnerability of a sector of the population makes it necessary for specific legal documents to provide massive protection so their rights are respected in the same way that the rest of the society is.

Once human rights are recognized and the compromises are set to be assumed by different countries that have been part of the Convention, it generates a normative framework to protect essential rights, such as life, dignity, and personal integrity.

In this sense, it cautions the relationship with the bioethics environment. This discipline focuses on ethical implications in decision-making of health and care, especially in situations that affect vulnerable people. This Convention and Bioethics merge in the need to safeguard the dignity and respect of senior citizens.

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This article will explore this interrelationship, highlighting the importance of an ethical approach while implementing policies and practices that affect senior adults in our contemporaneous society.

WHAT IS AN INTERNATIONAL CONVENTION?

To be in the context of the meaning of the Inter-American Convention for the Protection of the Human Rights of Older Persons. It is considered essential to address the legal concept of treaties and international conventions.

The words of Ignacio Burgoa (1997) claimed that commemorating agreements among two or more countries about diverse subjects might ensure that there are normative documents that make commitments in the international law area. The treaties in matters of human rights are generally subscribed to distinct countries. In other words, they are multilateral, which is reciprocally obligated to protect these rights in each one of them.

On June 10, 2011, it was published in the Official Gazette of the Federation as an amendment to the Political Constitution of the United Mexican States in which international treaties were recognized as a normative source of human rights, which means acquiring strong force as a legal provision to its due protection.

The treaties and international conventions regarding human rights are an essential part of international law of human rights, which is joined by countries of a system that goes beyond frontiers to complement the national normativity created to defend human rights worldwide (Rincon, 2018).

As Articles 1° & 133 of the Mexican Constitution of the United Mexican States, the treaties and international conventions are part of the legal order. Therefore, they are needed to be observed in all the national territory.

WHY TO HAVE AN INTER-AMERICAN CONVENTION?

Three regional systems, such as African, European, and Inter-American, have been set for the international defense of human rights,

According to the Inter-American Court of Human Rights (2020), the inter-american system emerged from the American States that adopted a series of international instruments to be constructed as the basis of a regional system to promote and safeguard human rights through two organs: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

These instruments refer to treaties and the Inter-American conventions that diverse countries have subscribed to and are part of the Organization of American States (OAS).

For this reason, to have a normative instrument of acknowledgement of human rights for the elderly, it was considered to elaborate the Inter-American Convention, the first international document on the subject.

WHAT IS THE INTER-AMERICAN CONVENTION FOR PROTECTING THE HUMAN RIGHTS OF THE SENIORS?

In the words of Peces-Barba (1999), the historical evolution of human rights has been modified into four stages: positivization, generalization, internationalization, and specification.

Positivization refers to the idea of human rights as natural rights of legal status to better security. (Peces-Barba, 1999), in the topic that addresses the recognition of human rights in a normative document. For this author, the generalization is a progressive adjustment between affirming that rights correspond to everyone and the practice that has restricted his enjoyment because of gender or social status. Similarly, it declares that internationalization is an acknowledgment of international regulations of human rights towards a more globalized world and the need to get international cooperation to protect them.

Concerning specification, Norberto Bobbio (1991) asserts that it is a gradual step towards a subsequent determination of the individuals holding the rights. To a greater abundance refers to the need for vulnerable groups' rights to be recognized in normative instruments focused on them to require special treatment. For instance, seniors need legal regulations to ensure their enjoyment is the same as the rest of society due to their condition.

Based on the aforementioned, in the Second Regional Intergovernmental Conference on Aging in Latin America and the Caribbean, the Economic Commission for Latin America and the Caribbean (ECLAC) and the Brazil Government formally expressed in the Brasilia Declaration the need to foster the international treaty to safeguard human rights of senior citizens.

In October 2010, the Permanent Council of the OAS convened a group of experts to analyze the possibility of drafting an inter-American treaty. A year later, the Working Group on the Protection of the Rights of Seniors will compose a report about the situation of this age group to examine the efficiency of these universal and linked regional instruments, which means compulsory character to countries with safeguarding their rights. After diverse meetings, this Group elaborated the first

draft of the project of the Inter-American Convention on the topic (Huenchuan, 2018).

The negotiations of this project had three stages. The first stage was to inspect each one of the articles, making the necessary adjustments. The second one carefully checked the content and was debated after all, asking for the opinion of the Department of International Law of the OAS and the Inter-American Commission on Human Rights. The last one was correcting the document to avoid duplicates and facilitating the project approval by the OAS General Assembly. It was in 2015 when this Assembly approved the Inter-American Convention for the Protection of Human Rights of Senior Citizens, which came into effect in 2017, upon its ratification being submitted at OAS headquarters (Huenchuan, 2018).

For this Convention to enter into force in the Mexican State, it required authorization by the Chamber of Senators to which effect, on January 10, 2023, the Decree by which the Chamber of Senators of the Congress of the Union approved said Convention adopted on June 15, 2015, in Washington, D.C., headquarters of the OAS, was published in the Official Gazette of the Federation. Subsequently, in the same Official Gazette of April 20, 2023, the Decree was published by which the President of the Republic promulgates the Convention, and becomes binding in Mexico, as provided in Article 133 of the Political Constitution of the United Mexican States (Political Constitution, 1917), since its Article 1 orders that all persons shall enjoy the human rights recognized in the constitutional text itself and in the international treaties and conventions on the matter that the Mexican State has entered into.

Once it was incorporated into the Mexican legal order, its content about recognizing human rights has the following features:

- a) Universality: is inherent to everyone and originates from dignity belonging to the human species is enough to enjoy them.
- b) Interdependency: it refers to human rights related among them, so its satisfaction or impact on one of them can transcend to the others.
- c) Indivisibility: human rights are part of everything because they are not objects of fragmentation. On the contrary, they protect themselves.
- d) Progressivity: its acknowledgment and defense do not admit backlinks. On the contrary, it will advance to certify its protection (Supreme Court of Justice of the Nation, 2013).

WHAT RIGHTS DOES THE INTER-AMERICAN CONVENTION RECOGNIZE?

To notice with better clarity the rights recognized by the Inter-American Convention, CLAC (Huenchuan, 2018) classified them into three types:

a) Emergent rights:

They are new rights or those partially recognized in international and national regulations. Regarding this aspect, we can find the rights of life and dignity to aging, the right to independence and autonomy, and finally, the right to care for the long term.

b) Current rights:

Rights have been considered in international regulations; nevertheless, they have to be adapted to the recent necessities of seniors because of present interpretations or broadening its content. The unconsumed interpretations distinguish the right to equality and non-discrimination due to age, the right to express free and informed consent concerning a healthy environment, and the right to security and a life without violence. Regarding expanding content, the right to work, right to health, access to justice, access to education and culture, access to a healthy environment, and finally, access to recreation, leisure, and sport.

c) Extended rights:

Lastly, extended rights are focused mainly on seniors since they have not enjoyed them before due to omission or discrimination. It includes the right to accessibility, personal mobility, and situations of risks and humanitarian emergencies.

It is relevant to say that one contribution to this Convention is the definition of a senior citizen as a person older than 60 or more unless the internal Law determines a lower or higher base age, provided that it does not exceed 65 years of age. In Mexico, Article 3 of the Law on the Rights of the Elderly, the Law on the Rights of the Elderly establishes that some are 60 years of age or older.

Pan American Health Organization (PAHO) points out that 27 specific human rights to seniors perceived in the Convention, in its document to promote the Decade of Healthy Aging are the following:

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| 1. Equality and non-discrimination due to age. | 11. Right to nationality and freedom of movement. |
| 2. Right to life and dignity during aging. | 12. Right to privacy and intimacy. |
| 3. Right to independence and autonomy. | 13. Right to social security. |
| 4. Right to participation and community integration. | 14. Right to work. |
| 5. Right to security and a life with no violence. | 15. Right to health. |
| 6. Right not to be subjected to torture or | 16. Right to education.. |
| | 17. Right to culture. |
| | 14. Right to recreation,leisure and sport. |

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| cruel, inhuman , or
degrading treatment
or punishment. | 15. Right to property. |
| 7. Right to provide free
and informed consent
in a healthy
environment. | 16. Right to housing |
| 8. Seniors' rights to
receive long-term
services. | 17. Right to a healthy
environment. |
| 9. Right to personal
freedom. | 18. Right to accessibility
and personal
mobility. |
| 10. Right to freedom of
expression and
opinion and access to
information. | 19. Political rights. |
| | 20. Right of meeting and
association. |
| | 21. Rights to seniors in
situations of danger
and humanitarian
emergencies. |
| | 22. Right to equal
recognition before
the law. |
| | 23. Right to access to
justice. |

HUMAN RIGHTS RECOGNIZED RELATED TO BIOETHICS

Generally, the stated rights protect essential human rights of life, dignity, and personal integrity of senior citizens. Hence, the specification is distinguished with rights focused on this age group. Nonetheless, the topic of this article will mention the rights related to the bioethical principles in the healthcare sector.

Following the mainstream Bioethics, it is noticed as principles: autonomy, beneficence, non-maleficence, and justice. Each one refers to the next (Hincapié, 2019):

- Autonomy is the rational capacity for decision-making without any external pressures.
- Beneficence is the duty to act for the well-being of the patient.
- Non-maleficence is the obligation of not provoking damage to the patient.
- Justice refers to the equal distribution of rights, benefits, risks, and healthcare burdens.

a) Autonomy.

This principle is related to the right of giving free and informed consent in the health sector (Article 11), in which suitable and efficient mechanisms must be taken into account to ensure that the senior citizen can decide about acceptance, refusal, or interruption of medical-surgical procedures once the person has been informed about the risks and benefits.

Furthermore, the rights of care services to a long term (Article 12), in which is disposed that people under these cares will authorize the beginning and ensign of the same, encouraging the decision of staying at home and keeping his independence and

autonomy. At the same time, the right to access information from his file. Article 7 recognizes that a senior citizen will have the right to determine his life plan and develop it autonomously and independently.

Moreover, paragraph 14 contemplates the right to access information, an indispensable component of the person's autonomy. Article 1 proclaims the right to privacy and intimacy and not being an object of arbitrary interference in his private life, which also are emphasized in Article 12 for those who receive care for the long term.

b) Beneficence.

Article 6 perceives the right to life and dignity for aging and includes access to palliative care related to the death of terminally ill patients and pain. One of the premises with a higher relationship is the number 19, which disposes the seniors' rights to enjoy the highest levels of physical, mental, and social well-being. Because of that, he will have access to integral health services of quality based on primary attention and training for people who are part of the care activities.

c) Non-maleficence.

The right to life and dignity for aging (Article 6) proclaims avoiding unnecessary suffering and worthless and ineffective interventions.

d) Justice.

This principle essentially refers to Article 5 of equality and non-discrimination due to age, equal access to health and welfare services, warranting the availability of drugs, benefits, and affordable and quality health services. Those rights are noted in the Articles 7, 12 and 19.

CONCLUSIONS

According to what was presented in this article, we can conclude that the Inter-American Convention for Protecting the Human Rights of Seniors represents a normative, international, and compulsory document for countries that belong to OAS. Additionally, it is the first international treaty that distinguishes specific human rights for this aging group.

Without a doubt, the rights recognized in this Convention are a product of previous studies to identify the main issues of seniors and how to face them.

The bioethical principles highlight autonomy since they precisely seek to dignify the senior in his decision-making capacity and the exercise of his rights, ensuring his independence and freedom to make decisions according to his values.

The Mexican State had success in ratifying this Convention and incorporating it into the legal system. In addition to national legislation, there will be an external source of recognition of the human rights of seniors.

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