

FROM WELL-BEING TO RIGHTS: CREATING AN INTERNATIONAL OLDER PERSONS' HUMAN RIGHTS INDEX (IOPHRI)

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Since the nineteenth century, the world's population of older persons has increased dramatically. Older persons now comprise nearly twenty percent of the world's population, and will likely comprise nearly thirty percent of it by 2040. Because of this increase, there has been a surge of interest in the development of Composite Indicators aimed at measuring the well-being of older persons. However, there has not yet been an effort to create an index that attempts to measure, compare, and evaluate the rights of older persons on a global-scale. In this Article, Professor Doron and Dr. Spanier justify the need for, and the process of developing, an index which looks at these rights. Their index is to be named the International Older Persons' Human Rights Index, or "IOPHRI", and it will be the first of its kind.

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“Human progress is neither automatic nor inevitable. . .”

Martin Luther King, Jr.

Introduction

Until well into the nineteenth century, older persons comprised only a small fraction of the world population, never more than five percent.¹ This reality has changed dramatically, as in the developed world today this group comprises roughly twenty percent of the population.² Moreover, three decades from now, by 2040, that share is on track to reach thirty percent.³ It is quite clear today that the world stands on the threshold of a dramatic demographic transformation, what we might call an “Old Age Revolution.”⁴ Half a century ago, global aging barely registered as a policy issue. Today, with a huge growth in the population of the elderly, most of the world’s leading economies have to think about this phenomenon. It has become a growing concern among policymakers, business leaders, and the gen-

1. See generally Implementation of the International Covenant on Economic, Social and Cultural Rights on its Thirteenth Session, 10, UN Doc. E/C.12/1995/16/Rev.1 (1995). This source details the economic, social, and cultural rights of older persons. One can correctly ask the preliminary question: Who is an “older person”? There is, of course, no one right answer to this question. There is biological age, there is health age, there is mental age, and so on. Because we are dealing with international law, we decided to adopt the definition from international instruments, specifically, see source above. This UN instrument implemented the rights of older persons to the ICESCR. The age adopted there is sixty years. *Id.* So for this work, older persons will be those who are sixty years or older.

2. *Id.* at 1.

3. Richard Jackson et al., *The Global Aging Preparedness Index*, <http://csis.org/program/global-aging-initiative> (last visited December 15, 2016) [hereinafter Jackson et al.].

4. U.N. Population Fund & Help Age Int’l, Overview of Available Policies and Legis., Data and Institutional Arrangements Relating to Older Persons—Progress Since Madrid (July 2011); Comm’n of the Eur. Communities: Comm’n Commc’n, The Demographic Future of Eur.—From Challenge to Opportunity 2 (2006); ANN NUMHAUSER-HENNING, AN INTRODUCTION TO ELDER LAW AND THE NORMA ELDER LAW RES. ENV’T 21-34 (2013) [hereinafter NUMHAUSER-HENNING]; UN Dept. of Economic and Social Affairs: *Current Status of the Social Situation, Well-Being, Participation in Development and Rights of Older Persons Worldwide 2* (2011), <http://www.un.org/esa/socdev/ageing/documents/publications/current-status-older-persons.pdf> [hereinafter Current Status of Older Persons]; see also Christina Victor, THE SAGE HANDBOOK OF SOCIAL GERONTOLOGY 61, 61-66 (Dale Dannefer & Chris Phillipson, ed., 2010); see, e.g., Israel Doron, EQUALITY LAW IN AN ENLARGED EUR. UNION: UNDERSTANDING THE ARTICLE 13 DIRECTIVES 117, 119 (Helen Meenan ed., 2007); see generally Zaidi et al., *Active Ageing Index 2012 Concept Methodology, and Final Results 1* (2013), www.euro.centre.org/data/aai/1253897823_70974.pdf [hereinafter Zaidi et al.].

eral public.⁵ This concern directly creates the need for information that is based on material facts.⁶

Composite indicators (hereinafter, indices or index) are increasingly used by statistical offices and national or international organizations to convey and compare information on the status of countries in areas such as the environment, economy, science, health, and education,⁷ and specifically within the OECD.⁸ It often seems easier for the general public to interpret indicators than to identify common trends across many separate variables, and they have also proven useful in benchmarking country performance.⁹

The result has been the emergence of a number of different indices, including those providing information on human rights. Examples include the Human Development Index (HDI) published each year by the United Nations Development Programme (UNDP) in domains like gender, health, and education,¹⁰ and the U.S. Department of

5. Jackson et al., *supra* note 3, at 2.

6. Andrea Saltelli, *Composite Indicators Between Analysis and Advocacy*, 81 SOCIAL INDICATORS RESEARCH 65 (2007) [hereinafter Saltelli]; see, e.g., *Global Age-Watch Index: A Summary*, 5 (2013), <http://www.helpage.org/global-agemwatch/reports/global-agemwatch-index-2013-insight-report-summary-and-methodology> (last visited November 9, 2016) [hereinafter *Global AgeWatch Index 2013*]; Zaidi et al., *supra* note 4, at 1; see generally U.N., THE MILLENNIUM DEVELOPMENT GOALS (2015) [hereinafter MILLENNIUM DEVELOPMENT GOALS]; Romina Bandura, *Measuring Country Performance and State Behavior: A Survey of Composite Indices*, 10, http://www.undp.org/content/dam/undp/library/corporate/Development%20Studies/measuring_country_performance_2005.pdf [hereinafter Bandura].

7. M. Saisana et al., *Uncertainty and Sensitivity Techniques as Tools for the Assessment of Composite Indicators*, A 168(2) J. OF THE ROYAL STAT. SOC'Y 307, 307 (2005) [hereinafter Saisana et al.]; see generally PwC, PWC GOLDEN AGE INDEX: HOW WELL ARE COUNTRIES HARNESSING THE POWER OF OLDER WORKERS? (2015), <http://www.pwc.co.uk/services/economics-policy/insights/uk-economic-outlook/pwc-golden-age-index-2015.html> (last visited Nov. 10, 2016) [hereinafter PwC].

8. See generally OECD, *Data*, <https://data.oecd.org/> (last visited Nov. 10, 2016).

9. OECD, HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS: METHODOLOGY AND USER GUIDE 13 (2008), <http://www.oecd.org/std/leading-indicators/42495745.pdf> [hereinafter HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS].

10. *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience VIII*, <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (last visited Nov. 10, 2016) [hereinafter *Human Development Report 2014*]; see generally U.N. DEV. PROGRAM, http://www.undp.org/content/undp/en/home/operations/about_us.html (last visited Nov. 10, 2016). UNDP works in more than 170 countries and territories, helping to achieve the eradication of poverty, and the reduction of inequalities and exclusion. UNDP focuses on helping countries build and share solutions in three main areas: sustainable development; democratic governance and peace building; climate and disaster resilience.

State's Country Reports on Human Rights Practices that is published every year in domains like discrimination, social abuses, and trafficking in persons.¹¹

Moving more specifically to the field of aging and older persons, over the last two decades, several international indices were developed in the field of well-being of older persons.¹² Examples include the Active Aging Indices (AAI) and the Global Age Watch Index.¹³ All of these indices are based on highly comparative quantitative data and are drawing a high-quality picture of older persons' well-being across the globe.¹⁴ However, there is little information available on measuring, comparing, and evaluating the status of the rules concerning the human rights of older persons. Up until now, no attempt has been made to explore and establish an International Older Persons' Human Rights Index (hereinafter, "IOPHRI").

The aim of this study is, therefore, twofold. First, it aims to argue that monitoring older persons' well-being, as it is done today, provides only a partial picture regarding the social position and experience of older persons. Therefore, there is a need and justification for including an IOPHRI to existing older persons' indices. Second, it aims to come up with an actual proposal for IOPHRI while presenting its implementation on a non-representative pilot sample of countries.

The IOPHRI is designed to identify and measure national legislation regarding the legal rights of older persons, including measures to prevent discrimination, neglect, abuse, and violence. It is our view that creating an IOPHRI will indicate the basic commitment of countries to older persons by providing a comparative and measurable "scale." We will argue that IOPHRI will give the current status of older persons normative rights and ensure priority is given to older persons by decision-makers.¹⁵ At the end of the day, there will be a much broader picture of older persons' rights and well-being. Combined with existing indices in the field of well-being and active aging,

11. U.S. Dep't of State, Bureau of Democracy, H.R. and Labor, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015 (2015) [hereinafter COUNTRY REPORTS].

12. See *Global AgeWatch Index 2013*, *supra* note 6, at 10. Wellbeing refers to domains like income security, health status, employment, education, and enabling environment; see PWC, *supra* note 7, at 4-6.

13. See generally Zaidi et al., *supra* note 4.

14. See generally *id.*

15. Michael Freeman, *Why it Remains Important to Take Children's Rights Seriously*, 15 *INTERN'L J. OF CHILD. RTS* 5, 8-10 (2007) [hereinafter Freeman].

IOPHRI will allow a better understanding of the status of older persons around the world.

The structure of this study will be as follows. The first part of this paper, the literature review, will provide a short explanation about indices in general—why do we need indices and what are the pros and cons for using them? Then we continue in the literature review by presenting indices from the field of human rights. This part provides actual examples of indices that are used in the field of women's and children's rights. These two areas are well monitored and are backed by existing international human rights conventions. We will explain how the indices are being constructed. By learning these indices, we can create a benchmark for the older persons' indices.

The second part explores the indices that exist for older persons. We will focus on and present two of the leading and well-known older persons' indices: the AgeWatch Index and the Active Aging Index (AAI).¹⁶ This part has two goals. The first is to explain what these indices are monitoring and the output of their findings; the second is to explain in depth what the mechanism of these indices is. We will show how these indices were created, the domain they use, and how the coding has been done.

In the third part, we will present how we created the IOPHRI. We will explain the theoretical foundation of the index, known as the Multi-Dimensional Model (MDM). We will present the list of the legal rights we are looking for in each dimension. After presenting the MDM, we will explain the way we propose to operationalize and code the IOPHRI while using a small, non-representative case-study of one country. The conclusion of this paper will present the opportunity to reflect on the limitations and advantages learnt so far from the pilot stage of establishing the IOPHRI. In the end, we will propose a road map for the future advancement of IOPHRI.

16. *Global AgeWatch Index 2013*, *supra* note 6.

Part 1: Literature Review

1.1 The Need for Indices

Composite indicators or indices—which are indices of individual indicators—that compare country performance¹⁷ are increasingly recognized as a “useful tool in policy analysis and public communication.”¹⁸ The number of indices around the world is growing every year.¹⁹ No less than 160 of them were available in 2006, and the number is growing rapidly.²⁰

The literature is pointing at various reasons for the need of indices.²¹ The first is the use of indices as a tool of informing domestic policymakers on the country’s trends and possible policy gaps.²² They can be useful in “identifying trends and drawing attention to particular issues” as well as being helpful in setting policy priorities, benchmarking, or monitoring.²³

The second need for indices is that they are a useful tool in simplifying complex, diverse, and multi-dimensional information.²⁴ “Composite indicators are valued for their ability to integrate large amounts of information into easily understood formats for a general audience.”²⁵ Other needs that are mentioned include serving as forward-looking or forecasting tools and assessing country’s progress towards international commitments by showing its performance in a clear format.²⁶

17. The goal of this paper’s project is to enable the comparison between countries. The picture we are trying to present is an international one.

18. HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9; see generally Michael Freudenberg, *Composite Indicators of Country Performance: A Critical Assessment*, 16 OECD SCI., TECH. AND INDUSTRY WORKING PAPERS 1, 5 (OECD Publishing, 2003) [hereinafter Freudenberg].

19. Bandura, *supra* note 6, at 8.

20. Bandura, *supra* note 6, at 8; HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 13.

21. See Saltelli, *supra* note 6, at 67–69; Bandura, *supra* note 6, at 10; HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 13; Zaidi et al., *supra* note 4, at 8–9; Brian K. Gran, *Comparing Children’s Rights: Introducing the Children’s Rights Index*, 18 *INTERN’L J. OF CHILD. RTS* 1 (2010); *Global AgeWatch Index 2013* *supra* note 6, at 5.

22. Bandura, *supra* note 6, at 10; HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 13.

23. HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 13.

24. Saltelli, *supra* note 6, at 67.

25. Freudenberg, *supra* note 18, at 5.

26. Stephen Morse, *For Better or for Worse, Till the Human Development Index Do Us Parts?*, 45 *ECOLOGICAL ECON.* 281, 281–82 (2003) [hereinafter Morse]; Bandura,

The scientific process of establishing indexes—similar to other method development processes—is of value in of itself. Making decisions on what to measure, how to measure, how to compare, and how to collect the data and evaluate its reliability and trustworthiness allows better understanding of the policy issues at stake and the policy goals that need to be achieved. It also opens up space for public debates around these issues. When conducted on an international level, such a process empowers groups that sometimes are excluded from similar processes on the national level and lowers the ability of national governments to influence the method of measurement to their advantage. Indices can also evaluate countries for their performance in a diverse set of issues, including competitiveness, governance, social aspects, human rights, and the environment.²⁷

1.1.1 Indices—Pros and Cons

When dealing with indices in the field of complex concepts in social sciences like citizenship, well-being, or learning, the debate around their justification is quite substantive.²⁸ While there are those who support and promote their adoption and usage, there is a strong opposition and some harsh criticism regarding both their reliability and effectiveness.²⁹ Indeed, the main pros and cons of using indices have been debated in several works, and we will hereby try to consolidate the main arguments regarding these pros and cons.³⁰

supra note 6, at 10. For example, an article in the *Irish Times* of Monday 12th July, 1999, reporting on the release of the latest Human Development Report (HDR): “Ireland now ranks 20th of the 174 states surveyed in the HDI, down from 17th last year.”

27. Bandura, *supra* note 6, at 9.

28. Michela Nardo & Michela Saisana, *OECD/JRC Handbook on constructing composite indicators. Putting theory into practice*, EC.Europa.eu/Eurostat/documents/100161714398416/S11P3-OECD-EC-HANDBOOK-NARDO-SAISANA.pdf [hereinafter Nardo & Saisana].

29. Dimitri Sanga, et al., *Tracking Progress towards Statistical Capacity Building Efforts – The African Statistical Development Index*, 79 *INTERN'L STAT. REVIEW* 3, 5 (Dec. 2011).

30. *HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS*, *supra* note 9, at 13–14; Andrea Saltelli et al., *Composite Indicators—The Controversy and the Way Forward*, *OECD WORLD FORUM ON KEY INDICATORS—STATISTICS, KNOWLEDGE AND POLICY* 2-3 (Nov. 2004); see generally Bandura, *supra* note 6, at 13–14; Nardo & Saisana, *supra* note 28, at 3; Saltelli, *supra* note 6, at 67–68.

1.1.1.1 PROS: WHY INDICES ARE OF VALUE

In general, the following arguments are usually raised in support of indices. They:

- a. Can summarize complex, multi-dimensional realities with a view to supporting decision makers;
- b. Provide the “big picture,” which is easier to interpret than a battery of many separate indicators;
- c. Reduce the visible size of a set of indicators without dropping the underlying information base;
- d. Enable users to effectively compare complex dimensions with one another;
- e. Facilitate the task of ranking countries on complex issues in a benchmarking exercise;
- f. Can assess progress of countries over time;
- g. Reduce the size of a set of indicators or include more information within the existing size limit;
- h. Place issues of country performance and progress at the center of the policy arena;
- i. Can help attract public interest and facilitate communication with the general public (i.e. citizens, the media, etc.) and promote accountability.

1.1.1.2 CONS: WHY INDICES ARE UNRELIABLE AND INEFFECTIVE

On the other hand, there are various arguments against the use of indices, which commonly assert that:

- a. Indices may send misleading policy messages if poorly constructed or misinterpreted;
- b. The “big picture” results which indices show may invite politicians to draw over-simplistic policy conclusions;
- c. Indices can be subject to manipulation by politicians and thus they are more “creative accounting” exercises than objective measures;
- d. They tend to “glorify” the same countries and then are used to “name and shame” others without adding any value;
- e. They may be misused, e.g. to support a desired policy, if the construction process is not transparent and lacks sound statistical or conceptual principles;
- f. The selection of indicators and weights attached to them could be the target of political challenge;
- g. For those rankings that categorize countries into groupings, such as “high,” “medium,” and “low,” or “good,” “worse,” and “bad,” the point range used is very subjective;

31. Klaus Abberger, *A Business Cycle Indicator for Abu Dhabi*, 12 CHINA-USA BUS. REV. 746, 746 (2013).

- h. They could increase the quantity of data needed because data are required for all the sub-indicators and for a statistically significant analysis;
- i. They may disguise serious failings in some dimensions and increase the difficulty of identifying proper remedial action;
- j. They may lead to inappropriate policies if dimensions of performance that are difficult to measure are ignored;
- k. They may not reflect cultural, ideological and historical differences, and hence may be biased towards Western, capitalist, or more developed countries' ideologies and preferences.

The debate on the efficiency and use of indices is ongoing, and it is difficult to imagine it ever being settled.³³ This is true, not only for the statistical experts, but also for all policymakers.³⁴ It is, therefore, not the aim of this study to resolve this debate. However, we will argue that the outcome of this legitimate debate is not to totally give up on establishing a rights index for older persons, but rather to take into account the critics and to improve the index while best addressing its potential limits and weaknesses.

1.2 Human Well-being Indices

1.2.1 BACKGROUND

There are indices for almost every field of our life. For example, in Bandura's article there is a list of more than 130 subjects of indices from Aging³⁵ to Country Indicators for Foreign Policy, Early Motherhood Risk Ranking, Environmental Sustainability Index, Food Insecurity and Press Freedom Index, etc.³⁶ The widespread use of indices in the social sciences has much less tradition than in other areas like economics.³⁷ The consensus on the definition of the framework is much

32. *Id.* at 14.

33. Saisana et al., *supra* note 7, at 308.

34. HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 14-15.

35. See Bandura, *supra* note 6, at 22. Ageing Vulnerability Index, Center for Strategic and International Studies and Watson Wyatt Worldwide Description and methodology: "The index assesses and ranks the vulnerability of 12 developed countries to rising old-age dependency costs. The index is compiled from indicators on four basic categories: 1. public burden indicators; 2. fiscal-room indicators; 3. benefit-dependent indicators; 4. elder-affluence indicators. This index will not be discussed in this paper because of its limited applications."

36. *Id.* at 1-5.

37. Nardo & Saisana, *supra* note 28, at 1-2.

more common for concepts like inflation than for abstract concepts like learning or citizenship.³⁸

For this study—in the field of law and human rights—if we want to classify the categories of existing indices, the question should be what aspect are the indices measuring?³⁹ One can talk about two main categories of indices.⁴⁰ The first is the economical and technological index, which compares areas like the economy, the environment, and globalization.⁴¹ This index monitors, among other things, openness and competitiveness,⁴² opening up of the borderlines between markets and states, encouragement of competition among states, and non-discrimination between foreign and domestic actors.⁴³ The second type of indices are in the social and cultural areas.⁴⁴ These indices monitor, among other things, human development, human rights, national health care systems performance, promotion of democracy and respect for human rights, and promoting basic human development.⁴⁵

1.2.2 HUMAN DEVELOPMENT AND HUMAN RIGHTS INDICES

The Universal Declaration of Human Rights (UDHR) of December 10, 1948, which was passed by the United Nations General Assembly, was part of the efforts to enhance human rights in the post-World War II world.⁴⁶ The UDHR's uniqueness regarding human rights lies in the fact that it is the first comprehensive one to include, in effect, all UN member states.⁴⁷ Not less important is the fact that, for the first time in history, there was an acknowledgment for human rights as a global responsibility.⁴⁸ While not legally binding, the

38. *Id.* at 2.

39. Fredrik Booyesen, *An Overview and Evaluation of Composite Indices of Development*, 59 SOC. INDICATORS RES. 115, 118 (2002).

40. Bandura, *supra* note 6, at 8.

41. Freudenberg, *supra* note 18, at 6.

42. Bandura, *supra* note 6, at 9.

43. *Id.*

44. Freudenberg, *supra* note 18, at 6.

45. Bandura, *supra* note 6, at 9; Freudenberg, *supra* note 18, at 6.

46. G.A. Res. 217 (III) A (Dec. 10, 1948); ED BATES, INT'L HUM. RTS. LAW 34-37 (Daniel Moeckli et al. eds., 2010); SHABTAI ROSENNE, THE PERPLEXITIES OF MODERN INT'L LAW 4-8 (2004) [hereinafter ROSENNE]; *see also* WIKTOR OSIATYNSKI, HUM. RTS. AND THEIR LIMITS 4-8 (2009) (discussing the progress of human rights after World War II and the Universal Declaration of Human Rights); *see generally* ALAN BOYLE, INT'L LAW 124 (Malcolm D. Evans, ed., 3rd ed. 2010).

47. ROSENNE, *supra* note 46, at 214-17.

48. UNDP, *Human Development Report 2000* (2000), http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf [hereinafter *Human Development Report 2000*].

UDHR has set an ideal standard for human rights around the world.⁴⁹ As the UDHR is very broad and general, it was not easy to operationalize its actual content. Hence, the UN started to search for ways to “measure” different aspects of the human condition in different countries around the world. One of the tools for this inspection was the creation of indices.

One of the first international human rights indices was the Human Development Index (HDI).⁵⁰ The index came to be one of the leading indices in the world.⁵¹ It was launched by the United Nations Development Program (UNDP) for the first time in 1990.⁵² The first step in creating an international tool for monitoring human development was to define the meaning of this aspiration. In an overview in the 1990 edition of the HDI, the term human development was defined *inter alia*:⁵³

[H]uman development is a process of enlarging people’s choices. The most critical of these wide-ranging choices are to live a long and healthy life, to be educated, and to have access to resources needed for a decent standard of living. . . . No one can guarantee human happiness, and the choices people make are their own concern. But the process of development should at least create a conducive environment for people, individually and collectively, to develop their full potential and to have a reasonable chance of leading productive and creative lives in accord with their needs and interests. Human development thus concerns more than the formation of human capabilities such as improved health or knowledge. It also concerns the use of these capabilities, be it for work, leisure, or political and cultural activities.⁵⁴

“Human development, in turn, is a process of enhancing human capabilities—to expand choices and opportunities so that each person can lead a life of respect and value.”⁵⁵

49. ROSENNE, *supra* note 46, at 214–17.

50. Douglas A. Hicks, *The Inequality - Adjusted Human Development Index: A Constructive Proposal*, 25 *WORLD DEV.* 1283, 1283-85 (1997) [hereinafter Hicks]; Mark McGillivray, *The Human Development Index: Yet Another Redundant Composite Development Indicator?*, 19 *WORLD DEV.* 1461, 1461-63 (1991); see generally Eric Neumayar, *The Human Development Index and Sustainability—Constructive Proposal*, 39(10) *ÉCOLOGICAL ECON.* 101, 101-2 (2001) [hereinafter Neumayar]; Morse, *supra* note 26, at 281-84.

51. Morse, *supra* note 26, at 282.

52. *Id.*

53. UNDP, *Human Development Report 1990: Concept and Measurement of Human Development* (1990), <http://hdr.undp.org/en/reports/global/hdr1990> [hereinafter *Human Development Report 1990*].

54. *Id.*

55. *Human Development Report 2000*, *supra* note 48, at 2.

The HDI's major goal was to focus attention away from income as a sole or major measure of human development towards more comprehensive methods.⁵⁶ It proposed to treat income as only one out of three factors, the other ones currently being life expectancy at birth as a proxy for health achievement and adult literacy together with educational enrollment as a proxy for educational attainment.⁵⁷ All three variables are aggregated via a simple arithmetic average into the HDI and are thus treated equally.⁵⁸ The HDI attempts to encompass three important spheres of socioeconomic life, each of which captures a different dimension of economic choices for well-being.⁵⁹

The idea of human development focuses directly on the progress of human lives and well-being. Focus on the moral principles and standards of life was challenged by the editors of the HDI edition of 2000.⁶⁰ The editors argued that the domain of interest of the human development approach goes far beyond what is measured by the HDI.⁶¹ Political, civil rights, and democratic freedoms also have their place in the human development perspective, though they are much harder to quantify. Therefore, an adequate conception of human development cannot ignore the importance of political liberties and democratic freedoms.⁶²

Human development and human rights followed parallel paths in both concept and action until the end of the last millennium.⁶³ The first as a process was promoted by policy-makers, economists, and social scientists.⁶⁴ The latest as a values oriented process was seen as a meter of NGOs, political activists, lawyers, and philosophers.⁶⁵ But today, as the two converge in both concept and action, the divide between the human development agenda and the human rights agenda

56. Neumayar, *supra* note 50, at 101.

57. *Id.*

58. *Id.* at 101-2.

59. Hicks, *supra* note 50, at 1284-86.

60. *Human Development Report 2000*, *supra* note 48, at 19-26.

61. *Id.*

62. *Id.*

63. *Id.* at 2.

64. JACK DONNELLY, UNIVERSAL HUM. RTS.: IN THEORY & PRAC. 27-33, 196-99 (2nd ed. 2003); e.g., MAURICE W. CRANSTON, WHAT ARE HUM. RTS.? 65-70 (1973); SYLVIA A. HEWLETT, THE CRUEL DILEMMAS OF DEVELOPMENT: TWENTIETH-CENTURY BRAZIL 4 (1980); NOVAK MARK, ISSUES IN AGING 89-119, 221-43, 246-67, 270-94 (2009); RICHARD A. POSNER, AGING AND OLD AGE 3-7 (1995).

65. RONALD DWORKIN, TAKING RTS. SERIOUSLY 168-77 (1978).

is narrowing. There is growing political support for each of them—and there are new opportunities for partnerships and alliances.⁶⁶

Human rights and human development share a common vision and a common purpose to secure the freedom, well-being, and dignity of all people everywhere.⁶⁷ There are substantial ways in which ideas of human rights contribute tools to the analysis of social progress offered by the human development approach. The editors of the 2000 edition of the HDI conclude by saying that the combination of the two perspectives gives something that neither can provide alone.⁶⁸ It can help to focus attention on these human rights—and to promote their fulfillment. At the same time, it can also enrich the understanding of the processes that lead to successes and failures in human development.⁶⁹

If we look, today, for instance, at the UN Human Development Report for 2014, we can see parameters of well-being and human rights.⁷⁰ We can see the adult health, health expenditures, and education,⁷¹ alongside with gender inequality.⁷² As we can see, there is an overlap between the human development and human rights. Talking about indices can and should include both of the paradigms of human development and human rights. They are all patterns of well-being.

1.2.3 GENDER INDICES

One of the defining movements of the twentieth century has been the relentless struggle for gender equality.⁷³ The United Nations has organized four world conferences on women's rights.⁷⁴ These international conferences on women and development have contributed greatly to raising the awareness of the global community about issues of gender disparity. The call for a Treaty for the Rights of Women

66. DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MOD. STATE TO COSMOPOLITAN GOVERNANCE* 271-76 (1995); e.g., PAUL GORDON LAUREN, *THE EVOLUTION OF INT'L HUM. RTS. VISIONS SEEN* 305-10 (3d ed. 2011).

67. *Human Development Report 2000*, *supra* note 48, at 1.

68. *Id.* at 26.

69. *Id.*

70. *Human Development Report 2014*, *supra* note 10, at 33-45, 83-96.

71. *Id.* at 188-95.

72. *Id.* at 172-75.

73. UNDP, *Human Development Report 1995: Gender and Human Development 1* (1995), <http://hdr.undp.org/En/content/human-development-report-1995> [hereinafter *Human Development Report 1995*].

74. U.N. WOMEN ORG., *WORLD CONF. ON WOMEN*, <http://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women> [hereinafter *World Conferences on Women*].

emerged from the First World Conference on Women in Mexico City in 1975.⁷⁵ The treaty was adopted unanimously by 130 countries in 1979 at the U.N. General Assembly.⁷⁶ The Fourth World Conference on Women took place in Beijing in September 1995.⁷⁷ The conference marked a significant turning point for the global agenda for gender equality. The Beijing Declaration and the Platform for Action, adopted unanimously by 189 countries, is an agenda for women's empowerment and is considered the key global policy document on gender equality.⁷⁸

In 1995, the HDI established an innovation report, the Gender-related Development Index (GDI), and the Gender Empowerment Measure (GEM).⁷⁹ The editors of the HDI wanted to align themselves with the twentieth century struggle for women's well-being. They wanted, as well, to contribute to the knowledge in the matter of gender equality. They hoped that the data of the index, the analysis, and the information provided in the HDI of 1995 would be of some assistance in the Beijing Convention.⁸⁰

Both of these two indices will become part of the HDI.⁸¹ The two new indices are measuring well-being.⁸² The GDI measures achievement in the same basic capabilities as HDI but takes note of inequalities in achievement between women and men.⁸³ "It adjusts the average achievement to reflect the inequalities between men and women in the following dimensions: (1) a long and healthy life, as measured by life expectancy at birth (2) knowledge, as measured by the adult literacy rate and the combined primary, secondary, and tertiary gross enrollment ratio (3) a decent standard of living, as measured by estimated earned income."⁸⁴

The GEM is meant to measure whether women and men hold equal power in the political and economic sphere.⁸⁵ "The GEM con-

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Human Development Report 1995, supra* note 73, at 2-4.

80. *Id.* at III.

81. *See generally Human Development Report 2014, supra* note 10, at 172-79.

82. Dana Schüler, *The Uses and Misuses of the Gender-related Development Index and Gender Empowerment Measure: A Review of the Literature*, 7 J. OF HUMAN DEV. 161, 161-62 (2006) [hereinafter Schüler].

83. *Id.* at 162.

84. Bandura, *supra* note 6, at 46.

85. Schüler, *supra* note 82, at 163.

sists of three indicators: male and female shares of parliamentary seats; male and female shares of administrative, professional technical, and managerial positions; and power over economic resources as measured by women's and men's estimated earned income."⁸⁶

"While the HDI has established itself as the highly visible flagship indicator of human development, the GDI and GEM are seen as quite specialized, and not easily interpretable measures."⁸⁷ The two indices faced methodological difficulties. The indicators are not easily interpreted and are, in fact, often misinterpreted. They were used relatively rarely.⁸⁸

Another relatively new gender index is the Global Gender Gap Report (GGGI). The GGGI was first introduced by the World Economic Forum in 2006 to provide a public, globally relevant tool that delivers information on how countries are fairing on gender equality.⁸⁹ The index of 2014 is the ninth edition of this index.⁹⁰ The index benchmarks national gender gaps on economic, political, education, and health criteria. The index also provides country rankings that allow greater awareness among global audience about the challenges posed by gender gaps and the opportunities created by reducing them.⁹¹

"The index methodology provides robust comparative and intra-country information."⁹² The GGGI rewards countries for economic participation and opportunity, educational attainment, health and survival, and the political empowerment of women.⁹³ The GGGI basic concept is that it evaluates countries based on outcomes rather than inputs or means. The aim is to provide a picture of where men and women stand with regard to some fundamental rights like health, education, economic participation, and political empowerment.⁹⁴

86. Schüler, *supra* note 82, at 163; see also Stephan Klasen, *UNDP's Gender Related Measures: Some Conceptual Problems and Possible Solutions*, 7 J. OF HUMAN DEV. 243, 243-45 (2006) [hereinafter Klasen].

87. Klasen, *supra* note 86, at 244.

88. Schüler, *supra* note 82, at 163.

89. World Econ. Forum, *The Global Gender Gap Report 3* (2014), http://www3.weforum.org/dues/GGGR14_CompleteReport_2014.pdf [hereinafter *The Global Gender Gap Report*].

90. *Id.*; see Bandura, *supra* note 6, at 44-46. List of four indices of gender not surveyed here.

91. *Id.* at 3.

92. *Id.* at 3.

93. *Id.* at 4-5.

94. *Id.* at 4.

The interesting element found in this index is the fact that in its last indicator it includes rights and norms.⁹⁵ Here are some examples for rights and norms that the index looks into: existence of legalization and punishment of acts of violence against women in cases of domestic violence,⁹⁶ existence of legislation prohibiting gender-based discrimination,⁹⁷ and the date women received the right to vote.⁹⁸ It should be noted that the information is not complete. In some of the countries there are missing laws and norms, and in some countries there is no information at all.⁹⁹

It is clear that from a gender perspective and women's rights approach there has been an attempt to create reliable indices to "measure" the status of women's rights. However, while the HDI has been very successful in becoming one of the central indicators for measuring development, the gender-related indicators have not succeeded nearly as much in academic or policy circles.¹⁰⁰ GEM, GDI, GGDI, and other gender-related indicators were raising conceptual questions about their effectiveness as instruments for capturing the gender dimensions of human rights development.¹⁰¹ More importantly, these indices also represent the difficulty in incorporating "law" or "legal rights" as part of their measurements and scales, as only the GGDI attempted to do so.¹⁰²

95. *Id.* at 91–92.

96. *Id.* at 91. The variable takes a value of zero when there is specific legislation in place, 0.25 when there is specific legislation in place but there are widespread reported problems with implementation, 0.5 when there is general legislation in place but specific legislation is inadequate, 0.75 when legislation is being planned drafted or reviewed or existing legislation is highly inadequate and 1 when there is no legislation.

97. *Id.* at 91.

98. *Id.* at 92. Refers to the year in which the right to vote or stand for election on a universal and equal basis was recognized.

99. *See generally id.*

100. Stephan Klasen & Dana Schuler, *Reforming the Gender-Related Development Index and the Gender Empowerment Measure: Implementing Some Specific Proposals*, 17 FEMINIST ECON. 1, 1-2 (2011) [hereinafter Klasen & Schuler].

101. *See generally* Kalpana Bardhan & Stephan Klasen, *UNDP's Gender-Related Indices: A Critical Review*, 27 WORLD DEVELOPMENT 985, 986-87 (1999); Klasen & Schuler, *supra* note 100, at 1-2 (discussing how materials on the gender-related indicators are not being accepted in academic and policy circles, or among the public as an effective instrument for capturing the gender dimensions of human development); Stephan Klasen, *UNDP's Gender Related Measures: Some Conceptual Problems and Possible Solutions*, 7 J. OF HUM. DEV. 243, 246-49 (2006).

102. CAROL R. UNDERWOOD ET AL., GENDER-EQUITY OR GENDER-EQUALITY OR GENDER-EQUALITY SCALES AND INDICES FOR POTENTIAL USE IN AQUATIC AGRICULTURAL SYSTEMS 18 (Johns Hopkins Bloomberg School of Public Health, 2014).

1.2.4 CHILD INDICES

Another field that attempts to “measure” human rights is that of children’s rights. “The U.N. Convention on the Rights of the Child was adopted in 1989 and provides that national governments will respect and enforce children’s rights.”¹⁰³ The U.N. Convention is a focal point of children’s rights efforts, if only because nearly every national government has ratified the U.N. Convention.¹⁰⁴ The U.N. Convention provides that national governments signing the Convention will respect and enforce children’s rights as well as other objectives. Among other important items, the Convention highlights different rights children are expected to possess, including civil rights such as freedom of conscience, political rights like the right to express views and have those views represented, social rights such as rights to healthcare and education, and economic rights such as freedom from exploitation and hazardous work.¹⁰⁵

In the year 2000, world leaders met in New York at the Millennium Summit and laid the foundations for the international Millennium Development Goals (MDGs).¹⁰⁶ These included universal access to primary education and a dramatic reduction of child mortality rates—to be achieved by 2015.¹⁰⁷ In 2008, in order to monitor progress in child well-being, “Save the Children UK” launched the Child Development Index (CDI),¹⁰⁸ a global tool to assess the performance of 141 countries on child mortality, nutrition, and access to primary education.¹⁰⁹

The CDI is based on an aggregate of three indicators that contribute to children’s well-being and development: health, education, and nutrition.¹¹⁰ These three indicators are aggregated by simply calculating the average score between them for each period under review, meaning that they each have equal weighting in the index scores.¹¹¹ Countries are then ranked according to their CDI scores. The lower the country’s score the better. “A zero score would mean that all

103. Gran, *supra* note 21, at 2.

104. *Id.*

105. *Id.*

106. G.A. Res. 55/2 (Sept. 18, 2000).

107. *Id.*

108. SAVE THE CHILDREN, U.K., THE CHILD DEV. INDEX (2008) http://www.savethechildren.org.uk/sites/default/files/docs/Child_Development_Index_2012_UK_low_res.pdf.

109. *Id.*

110. *Id.* at 4.

111. *Id.* at 5.

children survive beyond their fifth birthday, all under-fives are well nourished, and all primary school-age children are enrolled in primary school."¹¹² Data are drawn largely from UN and World Bank sources, supplemented by some national statistics.¹¹³

The second type of international index of children is Gran Children's Rights Index (CRI) presented by Brian K. Gran.¹¹⁴ The importance of this index to our IOPHRI discussion is that this index looks directly into the children's formal legal rights.¹¹⁵ More specifically, the CRI is an indicator for over 190 countries of four different types of children's rights: civil, political, social, and economic. For each kind of right, two specific rights are considered, so that the Children's Rights Index consists of eight rights overall.¹¹⁶ The CRI presents evidence on a range of rights children do and do not possess.¹¹⁷ In many ways this focus on the rights of children makes the CRI an innovative index because it conceptualizes children's rights as a way to present their current situation worldwide.

The CRI's primary source of data on children's rights is the U.S. Department of State's Country Reports on Human Rights Practices.¹¹⁸ Each of the eight rights noted above were coded according to four levels, which are (1) no rights; (2) rights exist but with significant, formal limitations; (3) rights exist with informal, minor limitation; and (4) rights exist.¹¹⁹ Potential scores on the CRI range from eight (a score of one on each of the eight rights) to thirty-two (a score of four on each of the eight rights).¹²⁰

It is interesting to see, then, that in the Children's Rights sphere there has been a direct and specific attempt to move beyond "general" indices regarding the well-being and social position of children into specific "measurement" of their legal rights. This direction of action

112. *Id.*

113. *Id.* at 6.

114. Gran, *supra* note 21, at 5-6.

115. See generally Katrien Beeckman, *Measuring the Implementation of the Right to Education: Educational Versus Human Rights Indicators*, 12 INT'L CHILD RTS. 71, 72-74 (2004).

116. Gran, *supra* note 21, at 5-6. These are the rights. The two civil rights are freedom of conscience and freedom from imprisonment with adults; the two political rights are the right to vote and the right to assemble; the two social rights are the right to education and the right to healthcare; the two economic rights are freedom from hazardous work and freedom from economic exploitation.

117. *Id.* at 5.

118. See generally COUNTRY REPORTS, *supra* note 11.

119. Gran, *supra* note 21, at 7.

120. *Id.*

and its methodology are of importance in moving towards developing an index in the field of older persons' rights.

1.2.5 THE "TYPES" OF INDICES—CONCLUSIONS

From the literature review, we can see that two main types of indices have been developed throughout the years. One is focused on what can be viewed as the general "well-being" of the target population, while the other is focused more on the formal and legal rights and norms. Behind the well-being indices stands the essential need of policy-makers and researchers for knowledge on whether human well-being has improved over time.¹²¹ As described above, improving well-being is an ambitious goal. Human well-being was considered to be analogous with income.¹²² "The HDI, in its function of life expectancy, adult literacy, and school enrollments" proposed to "extend the consideration of human development of wellbeing away from the economic-centric."¹²³ Today, the indices are much wider and go beyond income. "Terms such as quality of life, welfare, well-living, living standards, utility, . . . life satisfaction . . . are often used interchangeably with well-being."¹²⁴ The bottom line is that the well-being indices are becoming more popular and part of mainstream policy-making instruments.

On the other hand, and unlike the broad "well-being" indices, the literature review found only one "pure" formal rights index (CRI) and one attempt to monitor gender-related rights (GGGI). Prima facie, this reality could lead to the conclusion that formal rights indices are harder to shape from a methodological level (for example, the difficulty of defining exactly which laws to monitor). Another possible explanation for the lack of rights indices is that the language of rights can expose very different and new stories other than those currently being heard in public.¹²⁵ For example, the stories of women and children may look different through the lens of formal legal indices. The reason for this gap can stem from the fact that while many countries' children possess moderate levels of formal rights, in reality their experience

121. Mark McGillivray & Matthew Clark, HUMAN WELL-BEING: CONCEPT AND MEASURES, UNDERSTANDING HUMAN WELL-BEING 3, 5 (Mark McGillivray & Matthew Clark ed., 2007).

122. *Id.* at 3-6.

123. *Id.*

124. *Id.*

125. Freeman, *supra* note 15, at 6.

can be very different.¹²⁶ This “output-gap” does not exist to that extent in the wellbeing indices.

Part 2: Older Persons’ Indices

After reviewing human rights indices in the fields of women and children, the focus will turn to the field of older persons’ rights. Indeed, in the last several years, one can see indices regarding older persons emerging. This could be connected to the human rights indices trend shown above. Here are few examples of indices that are measuring older persons’ well-being.¹²⁷

2.1 Global AgeWatch Index 2013

Global AgeWatch Index 2013 is a central part of HelpAge International’s Global AgeWatch program.¹²⁸ Its core aim is to provide data and analysis on population aging to support policies that deliver the rights of older persons.¹²⁹ The index is based on the experience of similar indices, such as the HDI of the UNDP and the GGI.¹³⁰ The index settles on domains that capture the multi-dimensional nature of the quality of life and well-being of older persons for which adequate data is available.¹³¹

The index is constructed along the following four domains: income security, health status, education and employment, and enabling environment.¹³² It uses only outcome indicators. It is based neither on process indicators (such as legislation, for example, to protect specific rights in old age) nor on input indicators that measure a country’s efforts to deliver a desired outcome (such as social protection expenditures on pension and healthcare).¹³³ The index uses data from publicly available international data sets.¹³⁴

126. Gran, *supra* note 21, at 14.

127. See generally PWC, *supra* note 7.

128. *Global AgeWatch Index 2013*, *supra* note 6, at 4.

129. *Id.* at 20.

130. *Id.* at 6.

131. *Id.* at 5.

132. *Id.* at 12.

133. See *id.*

134. See *id.* For example, specifically data from the World Bank, United Nations Population Division, World Health Organization, the Institute for Health Metrics and Evaluation’s use of Global Burden of Disease database, Barro and Lee, the International Labour Organization and Gallup, see also *id.* at 22-25.

The choice of how much weight to give to the individual indicators within each domain, as well as how much weight to give to the domains themselves when aggregating the domain values to create the overall index, was a methodological choice.¹³⁵ The decision was made for this purpose: the weights assigned to different indicators within each domain do not have to be the same.¹³⁶ The weights depend on the judgment of the relative importance of the indicator within the domain and on the data quality of the indicator in question.¹³⁷

The overall index is calculated as the geometric mean of the four domain-specific indices (after normalization). The weights used for all the four domains to create the overall index are assumed to be the same. The weights assigned to the individual indicators in each domain are as follows:¹³⁸

- a. Income security domain: forty per cent for pension income coverage, twenty per cent for poverty rate, twenty per cent for relative welfare of older people, and twenty per cent for GDP per capita;
- b. Health status domain: forty per cent for life expectancy at sixty, forty per cent for health-adjusted life expectancy at sixty, and twenty per cent for psychological wellbeing;
- c. Education and employment domain and enabling environment domain: each indicator in these two domains has the same weight.¹³⁹

For example, the first ranked country is Sweden.¹⁴⁰ Sweden received the following scores: income security domain is eighty-seven percent, and it is located in the eighth place; health status domain is seventy-four percent, and it is located in the seventh place; education and employment domain is 74.3%; and enabling environment domain is eighty-three percent, and it is located in the fifth place. Over all elaborate mark is 89.9%.¹⁴¹ In comparison, Romania (forty-eighth place) received the following scores: income security domain is 80.6%, and it is located in the twenty-ninth place; health status domain is 38.6%, and it is located in the sixty-fourth place; education and employment domain is forty-seven percent, and it is located in the thirty-eighth place; and enabling environment domain is fifty-seven percent, and it is lo-

135. *Id.* at 13.

136. *Id.*

137. *Id.* at 14.

138. *Id.*

139. *Id.* at 13.

140. *Id.* at 17.

141. *Id.* at 19, 39, 48.

cated in the sixty-eighth place. Overall elaborate mark is 51.4%.¹⁴² Afghanistan (place 91 out of 91); income security domain is 24.2%, and it is located in the seventy-fifth place; health status domain is 7.6%, and it is located in the ninety-first place; education and employment domain is 9.4%, and it is located in the sixty-seventh place; and enabling environment domain is 46.2%, and it is located in the eighty-eighth place. Overall elaborate mark is 3.3%.¹⁴³

The editors of the Global AgeWatch Index 2013 are presenting a unique comparison with the latest HDI.¹⁴⁴ The results show that high HDI countries are mostly doing well with respect to the well-being of older people. For example, the high HDI countries of Europe and North America—Canada (fifth place) and USA (eighth place)—also do well in terms of the Global AgeWatch Index. However, there is no one-to-one relationship, as some European countries in the HDI—Belgium (twenty-fourth place), the Czech Republic (twenty-fifth place), Italy (twenty-seventh place), Hungary (fortieth place) and Greece (fifty-eighth place)—score notably worse in the Global AgeWatch Index despite having comparably high HDI rankings.¹⁴⁵ The editors mention Sri Lanka as doing very well in both indices (thirtieth place) in contrast to Pakistan ranked bottom in both indices. They are suggesting an in-depth comparison of Sri Lanka and Pakistan that could help identify policy interventions that may be successful in Pakistan to improve its record.¹⁴⁶

2.2 Active Ageing Index

Another older persons' index is the Active Ageing Index (AAI).¹⁴⁷ This European research project was aimed at providing a new tool for policy makers with the challenges of population aging and its impacts on society.¹⁴⁸ The context of the AAI project is that the year 2012 was the European Year for Active Ageing and Solidarity between Generations. It also marked the tenth anniversary of the Second World Assembly on Ageing, held in Madrid in April 2002 (MIPAA).¹⁴⁹

142. *Id.* at 19, 39, 49.

143. *Id.*

144. *Id.* at 14.

145. *Id.*

146. *Id.*

147. Zaidi et al., *supra* note 4, at 1.

148. *Id.*

149. *Id.*; see generally REPORT OF THE SECOND WORLD ASSEMBLY ON AGEING, U.N. Doc A/CONF.197/9 (2002).

The AAI sees active aging as growing older in good health and as a full member of society, more fulfilled in social engagements and more independent in daily life.¹⁵⁰ The active aging strategies are about changing attitudes and developing a more positive approach to tackling the challenges of aging. The active aging policy discourse links specifically with the social aging phenomenon in which, with rising life expectancy on average, it is important to realize the potential of older people.¹⁵¹ This can be achieved by enabling them to continue to participate in the labor market as well as in other non-market productive social activities and to stay independent and healthy for as long as possible.¹⁵²

Like the Global AgeWatch Index 2013, the AAI makes use of a methodology similar to the Human Development Index (HDI) of the UNDP.¹⁵³ Based on literature reviews,¹⁵⁴ consultations with the United Nations Economic Commission for Europe (UNECE), and the Expert Group, conceptual and empirical framework has been developed to aid the selection and organization of active aging indicators into specific domains.¹⁵⁵ The empirical work of the AAI measurement created the following four domains:¹⁵⁶

- a. Employment—to show the employment rate for the age groups (55-59, 60-64, 65-69, 70-74)¹⁵⁷
- b. Participation in society—to show the voluntary activities:¹⁵⁸
 1. Percentage of population aged 55+ providing unpaid voluntary service;
 2. Care to children and grandchildren: percentage of population aged 55+ providing care to their children or grandchildren at least once a week;

150. ACTIVE AGEING INDEX HOME (2015), <http://www1.unece.org/stat/platform/display/AAI/Active+Ageing+Index+Home> [hereinafter ACTIVE AGING INDEX 2014].

151. *Id.*

152. Zaidi et al., *supra* note 4, at 3.

153. *Id.* at I.

154. *Id.* at 6; *see, e.g.*, World Health Organization, ACTIVE AGEING: A POLICY FRAMEWORK: A CONTRIBUTION OF THE WORLD HEALTH ORGANIZATION TO THE SECOND UNITED NATION ASSEMBLY ON AGEING, MADRID, SPAIN (Apr. 2002), http://whqlibdoc.who.int/hq/2002/who_nmh_nph_02.8.pdf (last visited July 2015); European Union-eurostat, ACTIVE AGING AND SOLIDARITY BETWEEN GENERATION: A STATISTICAL PORTRAIT OF THE EUROPEAN UNION 2012 (2012), <http://Ec.Europa.eu/Eurostat/documents/3217490649/ks-EP-11-001-EN.pdf/ifob25f8-3c86-4f40-9376-c737654c5fcf>.

155. Zaidi et al., *supra* note 4, at 6.

156. *Id.* at 6-7.

157. *Id.* at 21.

158. *Id.*

3. Care to older adults: percentage of population aged 55+ providing care to elderly disabled relatives;
4. Political participation: percentage of population aged 55+ taking part in the activities of a trade union, a political party or a political action group;
- c. Independent living; healthy and secure living—for example:¹⁵⁹
 1. Independent living arrangements: percentage of persons aged 75+ living in single or couple households;
 2. Relative median income: ratio of the median equivalized disposable income of people aged 65+ to the median equivalized disposable income of those aged below 65;
 3. No poverty risk for older persons: percentage of people aged 65+ who are not at the risk of poverty, using 50% of the national median equivalized disposable income as the poverty threshold;
 4. Physical safety: percentage of population aged 55+ who are not worried about becoming a victim of violent crime;
- d. Capacity and enabling environment for active aging—for example:¹⁶⁰
 1. Remaining life expectancy achievement of 50 years at age 55;
 2. Share of healthy life years in the remaining life expectancy at age 55;

The methodology adopted in the aggregation of the selected active aging individual indicators to the domain-specific and to the overall AAI was similar to that used in the HDI of the UNDP.¹⁶¹ Weights assigned to individual indicators and domains and the exact way of calculation can be seen in the AAI report.¹⁶² It can be said that the AAI calculation is the most complicated among all the older peoples' indices.

The last index we will review in the context of older persons is the Global Aging Preparedness Index (GAP).¹⁶³ This index is concentrating on and providing a comprehensive assessment of the progress that countries worldwide are making in preparing for the global aging, i.e., particularly the "old-age dependency" dimension of the challenge.¹⁶⁴ This index is an economical point of view of the older population. The GAP Index consists of two separate sub-indices: a "fiscal sustainability index" and an "income adequacy index."¹⁶⁵ The bottom line is that this index is more of a benchmark for the financial perfor-

159. *Id.*

160. *Id.*

161. *Id.* at 15.

162. *Id.* at 15-19.

163. See generally Jackson et al., *supra* note 3.

164. *Id.*

165. *Id.*

mances of twenty countries, and then a well-being index of older persons.¹⁶⁶

The dimensions of the old population being shown in the old age indices described above are part of the need for information. The demand is for information regarding the social group of older persons. This includes dimensions like health care, social network, and economic question.¹⁶⁷ However, these indices can show only a part of the complete picture.¹⁶⁸ The well-being of older persons is leaving behind the need to understand and evaluate the status of the ruling concerning older persons' rights. In other words, we do not know if the picture presented in the well-being indices is an outcome of political or social way of living, or the outcome of rules that were made to protect and care for older persons. In other words, unlike the CRI or the GGGI, there is no reference to any formal legal rights element in either of the existing older persons' indices. Hence, we will hereby try to fill this gap.

Part 3: Constructing the IOPHRI Index

3.1 The Domains

As described above, although there are already some older persons' well-being indices, there is no "formal rights" index in this field. In order to develop such an index, there are various methodological challenges. For example, domains or indicators are the basic components for the construction of all indices. They define the data and the building blocks that will construct the index. As we saw above, the first step must be a careful and clear definition of the domain we are looking for.¹⁶⁹ In creating any index, and in our case the IOPHRI, there are few critical and obligatory steps.¹⁷⁰ Henceforth, we will present the

166. *Id.* at 3-11.

167. Israel Doron, *Elder law: Current Issues and Future Frontiers*, 3 EURO. J. ON AGING, 60, 61-62 (2006) [hereinafter Doron Elder Law]; A. LAWRENCE FROLIK & RICHARD L. KAPLAN, *ELDER LAW IN A NUTSHELL* 1-3 (5th ed. 2010); see generally Peter J. Strauss, *Elder Law in the Nineties*, 1 ELDER L.J. 19, 19-21 (1993).

168. See, e.g., Warren C. Sanderson & Sergei Scherbov, *Remeasuring Aging*, 329 SCIENCE 1287-88 (2010).

169. See generally HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 20; Gran, *supra* note 21, at 5-6; *The Global Gender Gap Report*, *supra* note 89, at 3-4; *Global Agewatch Index 2013*, *supra* note 6, at 8.

170. See generally HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 19-21; Nardo & Saisana, *supra* note 28, at 4-13; *Global Agewatch Index 2013* *supra* note 6, at 6-10.

steps, and we will walk through and explain how we will create the index.

The aim of the IOPHRI is to identify and evaluate good national practices regarding normative protection and promotion of the rights of older persons, including measures to prevent discrimination, neglect, abuse, and violence. Therefore, the challenge is to select those individual indicators that are simple and understandable. Yet they have to provide a useful picture and highlight areas of older persons' need. A careful review of existing indices construction methodologies has been undertaken. The first step is to settle the core conceptual domains that capture the multi-dimensional nature of the normative instruments of older people and for which adequate data is available in international data sets. For this purpose, we have adopted the multi-dimensional model (MDM) as our conceptual framework.

3.2 The Multi-dimensional Model

The multi-dimensional model of elder law was first presented by Doron as an Israeli model¹⁷¹ and has since been broadened for use in an international legal context.¹⁷² The multi-dimensional model presents the diversity and variability that characterizes the field of elder law.¹⁷³

The uniqueness of this model lies in its ability to offer a holistic picture of the legal system's responses to the needs of older persons.¹⁷⁴ This model was elected for the IOPHRI *prima facie* for the very efficient indices that were presented above showing the well-being point of view of older persons. The main reason for this was the model's elder law orientation.

The multi-dimensional model approaches the field of elder law in a holistic, conceptual way.¹⁷⁵ The model's aim is to describe the needs and interests of the older person population and, at the same

171. See generally Israel Doron, *A Multi-Dimensional Model of Elder Law: An Israeli Example*, 28 *AGEING INTERN'L* 242, 245-54 (2003).

172. See generally ISRAEL DORON, *THEORIES ON LAW AND AGEING: THE JURISPRUDENCE OF ELDER LAW* 59-70 (Israel Doron ed., 2009) [hereinafter DORON THEORIES]; ISRAEL DORON & NINA A. KOHN, *AGING IN PERSPECTIVE AND THE CASE OF CHINA: ISSUES AND APPROACHES* 72 (Sheying Chen & Jason Powell L., ed., 2011) [hereinafter DORON & KOHN].

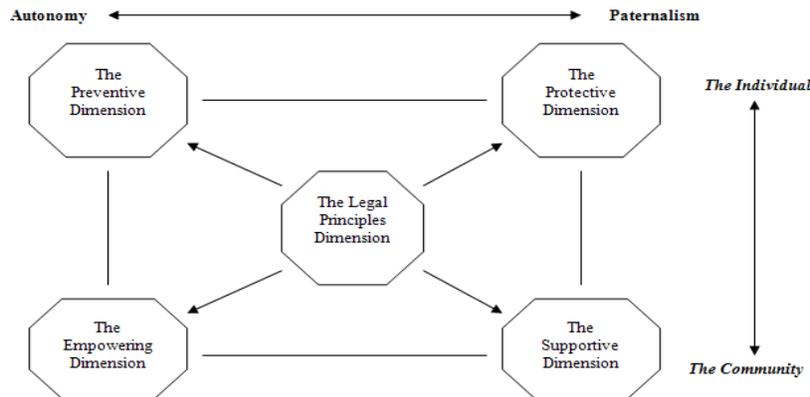
173. DORON THEORIES, *supra* note 172, at 70.

174. DORON & KOHN, *supra* note 172, at 72.

175. *Id.*

time, to address legal issues that are unique for this social group.¹⁷⁶ The model has five dimensions, each one of them differing to a different aspect of elder law.¹⁷⁷ These are the five dimensions:

FIGURE 1: THE MULTI-DIMENSIONAL MODEL¹⁷⁸



a. The Legal Principles Dimension: This dimension includes the core principles and values that apply to a wide range of events within the society.¹⁷⁹ It includes not only of laws designed specifically to meet the needs of older persons, but also the constitutional, statutory, and common law rules and principles that the legal system uses to respond to a broad range of societal concerns.¹⁸⁰ An example of this dimension will be the principle of prohibiting any kind of discrimination.

b. The Protective Dimension: This dimension includes laws and legal systems that are designed to provide special protection for older adults.¹⁸¹ The dimension looks for laws that are providing security and responding to the phenomenon and special needs of older persons.¹⁸² Examples include laws that are intended to prevent elderly persons abuse and neglect.¹⁸³

c. The Familial and Informal Supportive Dimension: This dimension centers on the broad circle that surrounds older persons.¹⁸⁴ The laws in this dimension are meant to support the formal and

176. *Id.*

177. *Id.* at 80.

178. *Id.*

179. *Id.*

180. *Id.* at 73; DORON THEORIES, *supra* note 172, at 59-62.

181. DORON & KOHN, *supra* note 172, at 74-75.

182. *Id.* at 74 - 76; DORON THEORIES, *supra* note 172, at 62-64.

183. DORON & KOHN, *supra* note 172, at 75.

184. *Id.* at 76-77; DORON THEORIES, *supra* note 172, at 64-66.

informal networks that support older persons and their needs.¹⁸⁵ Examples include laws focused on enabling older adults to receive informal, community-based care.¹⁸⁶

d. The Preventive Dimension: This dimension aims to give older persons legal tools that allow them to plan for the future.¹⁸⁷ This planning is wide and includes, for example, economic planning and the ability to plan for future incapacity.¹⁸⁸ More specifically, laws creating structures that allow older persons' wishes to be carried out, even when they are not able to act for themselves.¹⁸⁹ An example is leaving a will for choice of medical treatment when a terminal condition occurs and the elderly person is unable to communicate his choice.¹⁹⁰ There are also laws enabling older persons to exercise control over their lives and be able to avoid future loss of control by avoiding the need to be placed under guardianship.¹⁹¹

e. The Empowerment Dimension: This dimension includes laws and legal structures designed to help older persons realize their rights and implement them.¹⁹² An example is laws that provide for social security based on age. These laws directly assist older persons in accessing the rights afforded them under other types of laws.¹⁹³ In many ways this dimension overlaps the other four dimensions.¹⁹⁴

The model as it is described above is looking into the domestic laws. However, for this article, as Doron & Kohn suggested, the multi-dimensional model will be a useful tool for international comparative research.¹⁹⁵ One possibility is to take one dimension of the model and compare various components of its legal content between countries.¹⁹⁶ However, such an approach provides a limited and narrow legal picture. Therefore, for the purposes of IOPHRI, we decided to choose a methodology that will include all of the different dimensions included within the MDM, but also narrow the comparison to two elements in

185. DORON & KOHN, *supra* note 172, at 76-77; DORON THEORIES, *supra* note 172, at 64-66.

186. DORON & KOHN, *supra* note 172, at 76.

187. *Id.* at 77-78; DORON THEORIES, *supra* note 172, at 66-68.

188. DORON & KOHN, *supra* note 172, at 77-78; DORON THEORIES, *supra* note 172, at 66-68.

189. *See id.*

190. DORON THEORIES, *supra* note 172, at 76.

191. DORON & KOHN, *supra* note 172, at 77.

192. *Id.* at 78-79; DORON THEORIES, *supra* note 172, at 68-70.

193. DORON & KOHN, *supra* note 172, at 78.

194. *Id.* at 79.

195. *Id.* at 81-83.

196. *Id.* at 81-82.

every dimension.¹⁹⁷ This way, the multi-dimensional model will give an efficient and compact comparison tool for that mission.¹⁹⁸

At this point, from a methodological perspective, another decision has to be made. In legal literature, the gap between “law on the book” and “law in reality” is well-known and discussed.¹⁹⁹ In an ideal index, we would have chosen to “measure” law in reality. However, key considerations when making an international index include implicitness, availability, and neutrality in the comparison measurements. In general, national constitutions and national legislations are publicly accessible and transparent almost all over the world; therefore, adopting a “legislative”/statutory approach to measuring human rights, while having its known limits, allows for a useful comparison instrument. Moreover, in many comparative legal studies, comparing legislative frameworks is well-known—while, again, the application of laws might be very different in reality.

In summary, an accumulation of several key considerations have led us to choose a methodology that is based on a “statutory” comparison model, as described below.

3.3 The International Older Persons Human Rights Index—IOPHRI

The IOPHRI is composed of all five dimensions of the multi-dimensional model, i.e. the legal principles dimension, the protective dimension, the familial and informal supportive dimension, the preventive dimension, and the empowerment dimension.²⁰⁰ The proposed key indicators to be measured by IOPHRI include ten laws as specified in Figure 2.

197. *Id.* at 82.

198. *Id.* at 82.

199. See generally DOREEN J. MCBARNET, CONVICTION: LAW, THE STATE AND THE CONSTR. OF JUST. 3-25, 154-68 (1981); DOREEN J. MCBARNET, CRIME, COMPLAISANCE AND CONTROL (2004).

200. *Global AgeWatch Index 2013*, *supra* note 6, at 69.

FIGURE 2: KEY INDICATORS TO BE MEASURED BY IOPHRI

Dimension	The Laws
Legal Principles	In the Constitution, within the text concerning the right to equality and the prohibition of discrimination, is there a specific mention of "age" or "older persons"?
	Is there an explicit legal prohibition of discrimination against workers on the basis of "age" (for example, a law of equal work opportunities)?
Protective	Is there financial protection for older persons within the social security legislation (i.e. old age pension)?
	Is there specific law for protecting older persons from "abuse"?
Familial and Informal Supportive	Is there a specific law that recognizes and provides for rights of family members who are caregivers of older persons?
	Is there obligation by law for close family members to take care of their elder relatives?
Preventive	Is there a law that enables older persons to decide in advance by who and what medical decisions will be made on their behalf once they are found legally incapable of making such decisions?
	Is there a possibility for older persons to prepare a will?
Empowerment	Is there a specific law solely regarding older persons' rights?
	Is there a legal right for older persons to receive legal assistance or representation?

3.4 The Weighting of Older Persons Rights

All variables (the laws proposed above), which are aggregated, must first be weighted.²⁰¹ The existing literature offers quite a rich menu of alternative weighting methods, all having pros and cons.²⁰² All variables may be given equal weights or they may be given differing weights that reflect the significance, reliability, or other characteristics of the underlying data.²⁰³ The rank of a country on a given scale can easily change with alternative weighting systems.

Most composite indicators rely on equal weighting, i.e. all variables are given the same weight.²⁰⁴ This is the simple way to deal with the weighting question, but it could correspond to the case in which

201. Freudenberg, *supra* note 18, at 12; HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 8.

202. HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 31-34; Nardo & Saisana, *supra* note 28, at 8-10.

203. Nardo & Saisana, *supra* note 28, at 8.

204. HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 32; see generally Freudenberg, *supra* note 18, at 12 (indicating theoretical frameworks for deriving coherent weighting approaches are more difficult to construct).

all variables are “worth” the same in the composite.²⁰⁵ This implies that all indicators in the composite have equal importance.²⁰⁶

In the IOHPRI, we believe that all the variables are of equal importance.²⁰⁷ More than that, with the equal weighting approach, there is the risk that certain performance aspects will be double-weighted. This is because two or more indicators may be measuring the same behavior.²⁰⁸ In the IOPHRI, we made the effort that the ten chosen laws will not overlap each other.

We decided to encode our laws in four levels of weight scales rather than have a dichotomy between the right existing and not existing.²⁰⁹ The weight scales adopted are similar to the scales that were used in the CRI as described above.²¹⁰ We believe it will enable us to have more differentiation in the coding process and capture differences at the level of each right in all 193 countries of the world. We wish to distinguish between when formal limitations on a right exist, when a minor limitation on a right is in place, and when a right exists without any limitation. In other words, by selecting four levels of weight scales to our index, we can compensate for the first decision to give all the variables equal weights.

The scale is presented in Figure 3.

FIGURE 3: THE WEIGHT SCALES

Weights	Significance
0	No right for this kind to older person
1	Right exists with significant or formal limitations
2	Right exists with informal or minor limitations
3	Right exists

205. Nardo & Saisana, *supra* note 28, at 8.

206. Freudenberg, *supra* note 18, at 12.

207. See generally Nardo & Saisana, *supra* note 28, at 8-10; Freudenberg, *supra* note 18, at 12-13; HANDBOOK ON CONSTRUCTING COMPOSITE INDICATORS, *supra* note 9, at 32-33. Another approach is to give equal weights to all sub-indices or sub-components (which may comprise varying numbers of indicators). Another possible approach is to give a different weight to every variable or to give less weights to variables that suffer most from missing values in the attempt to partially correct for data problems.

208. Freudenberg, *supra* note 18, at 12.

209. See Gran, *supra* note 21, at 7. But see *The Global Gender Gap Report*, *supra* note 91, at 6.

210. See generally Gran, *supra* note 21.

The scale of the index will be between forty points for the country where all the laws fully exist to zero points where none of the rights exists at all.

3.5 The Data Sources

“The index is as good as the quality of data in its underlying indicators.”²¹¹ We are looking for sources of data that can give us the status of laws regarding older persons. Key considerations when making an international index include implicitness, availability, and neutrality in the comparison measurements. Therefore, there are few possibilities for sources from where the data can be obtained.

The first, most important, and “natural” source is the domestic legislation databases. In general, most countries’ national constitutions and national legislations are publicly accessible and transparent through government websites or official publications. In some places, they are also officially translated into English. The challenge will be to make it available where it is not available in English or the translation is not official.

Other options for databases or for completing the data include the following sources. The CRI’s primary source of data on children’s rights is the U.S. Department of State’s Country Reports on Human Rights Practices.²¹² Going into the U.S. Department of State’s Reports and looking for older persons’ rights yields no results. Section 6—Discrimination, Social Abuses and Trafficking in Persons—does not include any explicit expression of older persons.²¹³ There are special categories for Women, Children, and Anti-Semitism, etc.²¹⁴ However, in the category of “Promotion of Acts of Discrimination,”²¹⁵ there is a possibility of seeing the status of the law prohibiting discrimination in every country. In this way, we can find good answers for law number one which deals with the prohibition of discrimination of “aged” or “old persons.”²¹⁶

Other potential sources were reviewed above: Global AgeWatch Index 2013; Pension Watch: Social Protection in Older Age (branch of

211. Zaidi et al., *supra* note 4, at 11.

212. Gran, *supra* note 21, at 6; *see generally* COUNTRY REPORTS, *supra* note 11.

213. *See generally* COUNTRY REPORTS, *supra* note 11.

214. *Id.*

215. *Id.*

216. *Id.*

HelpAge International);²¹⁷ and The Active Aging Index (AAI) research project. We believe that all these databases will enable us to create a reliable IOPHRI.

3.6 Index Case-Study

In this part we will demonstrate the actual implementation of the index as presented in the analysis of a single country, Austria. The text is provided in its original form (while deleting the general, non-country-specific text) as was provided by Dr. Walter Fuchs as part of the preliminary pilot stage of the IOPHRI study.

NAME OF THE COUNTRY: AUSTRIA

1. Laws within the Legal/Constitutional Principles Dimension

1.a. In the Constitution, within the text concerning the Right to Equality and/or the prohibition of discrimination, is there a specific reference to "age" or "older persons"?

TABLE 1

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right Exists with some formal limitation	3- Right fully exists
		X	

General preliminary remarks

Some questions are not easy to answer for two reasons. First, Austria is both a federal state and a member state of the EU. A focus on the federal level of the Austrian legal system might not grasp the whole gamut of applicable statutes. Although I will try to point to the most important non-federal provisions, I cannot guarantee a complete account.

Second and more importantly, the Austrian legal system does not know many explicit rights of older persons as such.²¹⁸ In a textbook on "Fundamentals of Elder and Disability Law" ("Grundzüge

217. HELPAGE INT'L, *Pension Watch: Social Protection in Old Age*, <http://www.pension-watch.net/> (last visited Aug. 31, 2016). This NGO has very qualitative, reliable and important information concerning the economical data for our index. Although there is no clear data about laws concerning older persons' economics rights, it seems that it would be possible to get it from the organization's endpoints.

218. Josef Hörl, *National Report on Elder Abuse in Austria*, http://www.who.int/ageing/projects/Elder_abuse/alc_ed_aut.pdf.

des Alten- und Behindertenrechts"; Author: Michael Ganner, Second edition, Vienna 2014, p. 17), I even found the remark that such provisions were problematic with regard to the constitutional principle of equality.²¹⁹ However, this does not mean that there are no effective laws stating rights and safeguards for elderly people. For instance, several statutes contain provisions conferring rights on people in circumstances that might be especially applicable to the situation of many older persons in need of care (e.g. law on care allowance or law on data protection). On a dogmatic level, many rights for the aged are derived from general principles and rules (e.g. the constitution, the civil law or the administrative law).

It is not quite clear to me how such general provisions should be rated within the scale of the questionnaire. Is it what you mean by "indirect" legislation? Maybe it would make sense to integrate this aspect into the scale and its examples. Or one could differentiate between a dimension of explicit rights (in the sense of an "affirmative action") and a dimension of general principles and provisions that are applicable to, and especially important for, older persons. To me, it seems that the former does not necessarily have to guarantee more efficient rights than the latter (e.g. special provisions for the elderly could have a mere symbolic power, whereas general rules without explicit reference to older persons could create very effective entitlements).

Right to equality:

a. European Union: Charter of fundamental rights, Article 21 (non-discrimination), Article 25 (the rights of the elderly)

http://www.europarl.europa.eu/charter/pdf/text_en.pdf

b. Austria: Article 7 of the Federal Constitutional Law ("Bundes-Verfassungsgesetz"); Link to English and German version:

https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.pdf

Older people are not explicitly mentioned. However, discriminations on grounds of age will most likely fall into the article's provision on forbidden unequal treatment (as developed by legal science and the Constitutional Court). Moreover, there is a sentence stating that no one "shall be discriminated against because of his disability."²²⁰

Overall, I rated Austria 2.

219. *Id.*

220. AUSTRIAN CONST., rev. 2009, Art. 7 ¶1.

1.b. Is there an explicit legal prohibition of discrimination against workers on the basis of “age” (for example, Law of Equal Labor Opportunities or Age Discrimination in Employment)?

TABLE 2

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
		X	

European Union:

a. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

<http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:32000L0078>

Austria:

There are two laws that implement the abovementioned EU directive, one for employees of the state and one for private sector employees.

a. Private sector: Federal Law on Equal Treatment (“Bundesgesetz über die Gleichbehandlung” or “Gleichbehandlungsgesetz”): § 17 (prohibition of discrimination), § 20 (exemptions)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>

b. Public sector: Federal Law on Equal Treatment in the Federal Sector (“Bundesgesetz über die Gleichbehandlung im Bereich des Bundes” or “Bundes-Gleichbehandlungsgesetz”): § 13 (prohibition of discrimination), § 13b (exemptions)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008858>

Both laws contain—following the EU-directive—relatively wide-ranging exemptions. The latter are allowed if they are “objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labor market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.” With the help of a recent case-law review, I found three relevant decisions of the Austrian Supreme Court dealing with age discrimination in the light of the Federal Law on Equal Treatment. Two of them ruled against the plaintiff. In the third and most novel judgment, the court partially confirmed the legitimacy of the plaintiff’s claim and remitted the matter to the lower court (that had decided in favor of the plaintiff) for reasons of insufficient evidence. According to commentators,

this verdict might establish a new line of case law that is more sensitive to the issue of age discrimination. Thus, my overall rating is 2.

2. Laws within the Protective Dimension

2.a. Is there financial/economic/social-security protection for older persons within the social security legislation (i.e. old age pension)?

TABLE 3

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
			X

There are several laws that establish entitlements to old age pensions for different occupational groups:

- a. General Law on Pensions (“Allgemeines Pensionsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003831>
- b. Law on General Social Security (“Allgemeines Sozialversicherungsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147>
- c. Law on Social Security for the Commercial Sector (“Gewerbliches Sozialversicherungsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008422>
- d. Law on Social Security for Freelancers (“Freiberuflichen- Sozialversicherungsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008423>
- e. Law on Social Security for Farmers (“Bauern- Sozialversicherungsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008431&ShowPrintPreview=True>
- f. Law on Pensions for Civil Servants (“Beamten-Pensionsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008210>

Another important aspect of financial protection of older persons is the financing of care. There is a law that grants allowances to people in need of care.²²¹ The amount depends on the grade of impairment.²²²

221. *Bundesrecht Konsolidiert: Gesamte Rechtsvorschrift für Bundespflegegeldgesetz, Fassung vom 30.08.2016*, BUNDESKANZLERAMT RECHTS INFORMATIONEN SYSTEM, (Aug. 30, 2016),

a. Federal Law on Care Allowance (“Bundespflegegeldgesetz”)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008859>

In many cases, however, the amount of care allowance is not enough to guarantee an adequate level of care (especially with regard to the costs of nursing homes). Therefore, older persons in need of care frequently have to rely on additional social benefits that mainly fall into the jurisdiction of the nine Austrian provinces (“Länder”).²²³ One of the most important is the “means-tested minimum income.”²²⁴

a. Example: Viennese Law on Means-Tested Minimum Income (“Gesetz zur Berdafsorientierten Mindestsicherung in Wien”); similar laws exist in all other provinces
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000246>

2.b. Is there a law for protecting older persons from “abuse”?

TABLE 4

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
		X	

In Austria, the legal protection of older persons against abuse is mainly realized through the guardianship law on the one hand and a law that aims to monitor the living conditions in nursing homes (especially when it comes to measures that restrict the freedom of movement) on the other hand. Admittedly, it is debatable whether the former is an adequate instrument to reach this goal (sadly, cases of abuse or neglect by guardians are a perennial issue). While the latter actually seems to have established a rights-sensitive culture in nursing homes, similar mechanisms are lacking for the realm of non-institutionalized care.

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008858>.

222. *Id.*

223. Ulrike Schneider & Birgit Trukeschitz, *Changing Long-term care needs in ageing societies: Austria's policy responses*, VIENNA UNIV. OF ECON. AND BUS. RESEARCH INST. FOR ECON. OF AGING INST. FOR SOC. POL. (Dec. 2008), http://cis.ier.hit-u.ac.jp/English/society/conference090114hosei/Paper_Ulrike_Schneider.pdf.

224. LGBL, Nr.02/2011.

a. Guardianship Law: Austrian Civil Code (“Allgemeines Bürgerliches Gesetzbuch”), §§ 268-284h

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>

b. Nursing Home Residence Act (“Heimaufenthaltsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003231>

3. Laws within the Familial and Informal Supportive Dimension

3.a. Is there a law that recognizes and provides for rights of family members who are caregivers of older persons?

TABLE 5

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
			X

1. Paid leave of absence for care (“Pflegefreistellung”):

Family or household members have the right to take a paid leave of absence up to one week per year in order to provide care.

a. Private sector: Federal Law on Annual Leave (“Urlaubsgesetz”), §§ 15-17

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008376>

b. Public sector: Public Services Law Act (“Beamtendienstrechtsgesetz”), § 76

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008470>

2. Unpaid leave of absence or part-time work for care or terminal care (“Pflegekarenz”, “Pflegefreistellung” or “Familienhospizkarenz”)

a. Contract Law Adaption Act (“Arbeitsvertragsrechts-Anpassungs-gesetz”), §§ 14a-14d

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008872>

3.b. Is there a legal obligation for close family members to take care of their elderly relatives?

TABLE 6

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
	X		

The Austrian legal system does not know any general obligation to take care of older relatives. I suppose that such a provision would be considered unconstitutional. However, there is a subsidiary obligation to pay alimony to parents (or grand-parents) in the area of family law.

a. Austrian Civil Code (“Allgemeines Bürgerliches Gesetzbuch”), § 234

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>

This provision had some practical significance in the area of social benefits to finance institutionalized care paid for by the Austrian provinces. Their laws on welfare and means-tested minimum income contained liabilities to recourse—under certain conditions, children had to pay back a share of the costs or the parents had to assign the alimony obligation to the social assistance authorities.²²⁵ These—highly contested—liabilities were abolished between 2009 and 2014.²²⁶ Nevertheless, some provinces still have provisions stating that the social welfare administrations can “reclaim” the value of gifts made by financially assisted persons in need of care.

4. Laws within the Preventive and Planning Dimensions

4.a. Is there a law that enables older persons to decide in advance by who and what medical decisions will be made on their behalf once found legally incapable of making such decisions?

TABLE 7

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
			X

a. Federal Law on Living Wills (“Patientenverfügungsgesetz”)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004723>

b. Provisions on advance directives: Austrian Civil Code (“Allgemeines Bürgerliches Gesetzbuch”), §§ 284f-284h

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>

225. *A Comparative Study of Child Maintenance Regimes*, UNIV. OF YORK (July 1, 2006), <https://www.york.ac.uk/inst/spru/research/childsupport/Austria.pdf>.

226. ABGB §234, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622> (last visited Dec. 18, 2016).

4.b. Is there a legal ability for older persons to prepare a will?

TABLE 8

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
			X

The Austrian Civil Code knows several possibilities to prepare wills.

a. Austrian Civil Code (“Allgemeines Bürgerliches Gesetzbuch”), §§ 552-603

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>

5. Laws within the Empowerment Dimension

To my knowledge, this dimension is quite poorly developed in Austria (cf. my preliminary remark).

5.a. Is there a specific law solely regarding older persons’ rights as such (e.g. Senior Citizens’ Rights Law/Statute)?

TABLE 9

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
X			

5.b. Is there a legal right for older persons—as such and due to their status as “elderly” or due to old age—to receive legal aid, and/or legal assistance/representation?

TABLE 10

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- Right fully exists
X			

In sum, the overall score for Austria can be summarized as follows:

TABLE 11

Law	Austria
In the Constitution, within the text concerning the Right to Equality and/or the prohibition of discrimination, is there a specific reference to "age" or "older persons"?	2
Is there an explicit legal prohibition of discrimination against workers on the basis of "age" (for example, Law of Equal Labor Opportunities or Age Discrimination in Employment)?	2
Is there financial/economic/social-security protection for older persons within the social security legislation (i.e. old age pension)?	3
Is there a law for protecting older persons from "abuse"?	2
Is there a law that recognizes and provides for rights of family members who are caregivers of older persons?	3
Is there a legal obligation for close family members to take care of their elderly relatives?	1
Is there a law that enables older persons to decide in advance by who and what medical decisions will be made on their behalf once found legally incapable to make such decisions?	3
Is there a legal ability for older persons to prepare a will?	3
Is there a specific law solely regarding older persons' rights as such (e.g. Senior Citizens' Rights Law/Statute)?	0
Is there a legal right for older persons—as such and due to their status as "elderly" or due to old age—to receive legal aid, and/or legal assistance/representation?	0
Overall score for Austria	19/30

Part 4. Discussion and Conclusion

It is clear that the development of IOPHRI is still a “work in progress.” However, the goal of this article is not only to report on the plan to develop such an initiative and provide a real case-study of its implementation, but also to trigger a debate both regarding its justification and its methodological soundness.

Even at this early stage, we are able to point to several key limitations and weaknesses as well as some advantages and strengths of our proposed IOPHRI. We will describe these preliminary conclusions hereinafter.

4.1 The limitations of the proposed index

From the limited case study presented in Appendix B, some limitations and challenges were exposed. The first issue arises in the context of countries that run a federal legal system. In such countries, there are laws and legislation on both the federal and the state/provincial levels.²²⁷ The outcome of such a limit is that the “score” that is received from the analysis of a specific “state” (e.g. the state of New York) may be very different from that of a different state within the same country. Therefore, it will be impossible to establish a “national” (i.e. “federal”) score for countries that are legally federal in nature (unless the “score” will be “state-specific” within the country). To overcome such a methodological limit, some serious issues have to be addressed. For example, would it be valid to “grade” all the different provinces within a specific federal country and to take the average score as the country’s general score? Moreover, as seen in Austria’s example, the legal assessment challenge is not only limited to the state versus federal law issue, but may also involve national/federal law versus regional/international law. In the case of Austria, one cannot assess the country’s law without taking into account EU law. Taking this example further up the ladder, for example, one cannot fully understand Austria’s law without taking into account the rulings and precedents of the European Court of Human Rights since Austria is signatory to (and has also ratified) the European Convention for Human Rights.²²⁸ Finally, as was described in the literature review, it is clear that such an index does not really provide a full and accurate picture of the legal rights of older persons in Austria. In reality, there can be a significant gap between “the law on the books” and the actual legal reality older persons experience in their daily lives.

4.2 The advantages of the proposed index

Despite the challenges and limitations of IOPHRI as described above, it is also quite clear from the case study that a very strong potential of success exists in our proposed index. For example, five or ten years from today, if we would like to assess to what extent Austria has changed or improved its legislative approach towards the rights of older persons, we will have a reference point to enable us to make a

227. See U.S. CONST. amend. X.

228. Theo Ohlinger, *Austria and Article 6 of the European Convention on Human Rights*, THE EUR. J. OF INT’L L. 286, 289 (1990).

comparison. Additionally, if we would like to assess how Austria's legislative stance toward the rights of older persons compares to other countries around the world, our index can provide such a comparative benchmark. Finally, if Austria would like to know in which areas of law it needs to think about reforming or improving, this model can point to them. For example, it may consider enacting the right to receive legal aid in old age or a new and specific law regarding older persons.

4.3 Looking into the future

As a work in progress, analyzing more countries is the next stage. Hopefully, in the coming year, a convenient sample of countries from around the world will be established. At this stage, a more thorough understanding of the methodological limits will be available, and a better understanding of how to improve it will be made possible. Once the pilot study is completed, IOPHRI will be ready to move to the final stage of conducting a global assessment. This will naturally require both resources and cooperation, but as a long-term project, there is a goal to be achieved.

Appendix A

OPHRI Questionnaire**Name of the country:** _____

Please fill the following questionnaire to the best of your knowledge and understanding with regard to the law, legislation and statutes within your country.

The "scale" of this questionnaire is between 0 and 3 as follows regarding your country:²²⁹

0 – No Legislation: There is no direct and/or indirect legislation/statutes in this field of legal rights in your country.

1 – Right exists with significant or major formal limitation: There is some direct and/or even indirect reference to the rights in existing legislation; however, the right is significantly limited and/or there are significant exemptions and/or there are significant legal barriers to their fulfillment.

For example, there is a legal prohibition on age discrimination but it refers only to a very small and/or specific group of workers and/or there is a wide/broad option for employers to be exempt from this duty as to make it in-applicable for most workers.

2 - Right exists with some formal limitation: There is general and/or specific legislation in this field which covers the legal rights referred to. However, some formal/specific limitations on these rights exist which limited them in their scope.

For example, a law that prohibits discrimination based on age but with specific (and limited) restrictions or limitations (e.g. shorter limitation period, reference to specific age groups [e.g. only age 40 and above]), exemptions (e.g. military/security forces).

3 – Right fully exists: There is direct and/or specific extensive/full/broad legislation in this field which fully covers the legal rights referred to in the question.

For example, a law that fully prohibits discrimination based on age without any specific limitations beyond the general limitations regarding similar discrimination based on gender, race, etc.

229. If you are living in a "federal" country, please refer both to legislation at the federal level and the state level "combined".

NUMBER 2

FROM WELL-BEING TO RIGHTS

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Laws within the Legal/Constitutional Principles Dimension

1.a. In the Constitution, within the text concerning the Right to Equality and/or the prohibition of discrimination: is there a specific reference to "age" or "older persons"?

0 - No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the article(s) within the constitution and or the law(s) you were referring to and attach them (or the link).

1.b. Is there an explicit legal prohibition of discrimination against workers on the basis of "age" (for example, Law of Equal Labor Opportunities or Age Discrimination in Employment)?

0 - No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

Laws within the Protective Dimension

2.a. Is there financial/economic/social security protection for older persons within the social security legislation (i.e. old age pension)?

0 - No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach (or the link).

2.b. Is there a law for protecting older persons from "abuse"?

0 - No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

Laws within the Familial and Informal Supportive Dimension

3.a. Is there a law that recognizes and provides for rights of family members who are caregivers of older persons?

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

3.b. Is there a legal obligation by law for close family members to take care of their elder relatives?

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

Laws within the Preventive and Planning Dimensions

4.a. Is there a law that enables older persons to decide in advance by who and what medical decisions will be made on their behalf once found legally incapable of making such decisions?

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

4.b. Is there a legal ability for older persons to prepare a will?

0 – No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

NUMBER 2

FROM WELL-BEING TO RIGHTS

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Laws within the Empowerment Dimension

5.a. Is there a specific law solely regarding older persons' rights as such (e.g. Senior Citizens' Rights Law/Statute)?

0 - No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

5.b. Is there a legal right for older persons as such and due to their status as "elderly" or due to old age to receive legal aid, and/or legal assistance/representation?

0 - No legislation	1- Right exists with significant or major formal limitation	2- Right exists with some formal limitation	3- right fully exists

Please write the name of the law(s) you were referring to and attach them (or the link).

