



HelpAge International submission on the normative content of the right of older persons to equality and non-discrimination

9th Working Session of the Open-ended Working Group on Ageing, 2018

The right of older persons to equality and non-discrimination

Definition of discrimination

Discrimination against older persons is understood as any differential treatment, including but not limited to any distinction, exclusion, restriction or preference based directly or indirectly on age or any other ground, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Affirmation of the right

1. Older persons have the right to equality and freedom from discrimination on the basis of their age or on any other ground, alone or in combination with another ground or grounds.

Scope of the right

1.1 The prohibition of, and guarantee of legal protection against, discrimination against older persons shall apply to every aspect of life without limitation.

1.2 The right shall engage all forms of discrimination against older persons including direct, indirect, by association, by perception or imputation, incitement, vilification, victimization, harassment and denial of reasonable accommodation.

1.3 Specific measures which are necessary to accelerate or achieve de facto equality of older persons shall not be considered discrimination.

1.4 The grounds upon which intersectional and cumulative discrimination may occur shall be comprehensive.

State obligations

2. States Parties shall undertake:

2.1 To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against older persons;

2.2 To take all appropriate steps to ensure formal and substantive equality of older persons, including but not limited to a duty to consider the differential impact of all their decisions, in particular age-based policies, on older persons;

2.3 To prohibit and take all steps to eliminate intersectional discrimination, namely the combined effect of age and another personal characteristic or the combined effect of any two or more characteristics;

2.4 To prohibit and take all steps to eliminate cumulative discrimination and victimisation, namely discrimination and or victimization on a number of occasions over time and or from multiple sources;

2.5 To take all appropriate measures to ensure protection for particular groups of older persons who suffer discrimination and denial of rights on heightened or systemic basis and/or as a common experience;

2.6 To take all appropriate steps to eliminate discrimination against an individual and any ageist institutional, systemic or structural practices which affect the human dignity of older persons;

2.7 To take all appropriate steps to eliminate harmful ageist social norms and practices, including traditional practices, which affect the human rights and dignity of older persons;

2.8 To ensure the access of older persons to tailored and comprehensive assistance in making claims and accessing justice;

2.9 To ensure the access of older persons to redress and reparation for age discrimination, including where appropriate taking cumulative discrimination into account in any award of damages;

2.10 To adopt immediate, effective and appropriate measures to promote information, research and public awareness around equality and non-discrimination against older persons, inter alia, by:

- Raising awareness of the rights and capacities of older persons
- Countering any discriminatory systemic ageist perceptions of, and practices towards, older persons
- Promoting awareness of the benefits of age equality and of investing in older age
- Promoting a positive image of ageing
- Undertaking or promoting research on ageing and on issues particularly affecting older persons, and ensuring data is collected, disaggregated, analysed, utilised and disseminated by all ages, taking into account intersectionality
- Providing accessible, appropriate information to older persons on their rights and entitlement to benefits and resources

- Engaging and making older persons partners and active participants in shaping social policies and public programmes which relate to their rights and interests
- Promoting intergenerational interactions and solidarity.

Annex: Normative basis of the right of older persons to equality and non-discrimination

Content: Definition

Discrimination against older persons is understood as any differential treatment, including but not limited to any distinction, exclusion, restriction or preference based directly or indirectly on age or any other ground, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Sources

International

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 1.1: In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

Article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Convention on the Rights of Persons with Disabilities, 2006

Article 2: "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009

7. Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2, paragraph 2, requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.¹ Discrimination also includes incitement to discriminate and harassment.

¹ For a similar definition see art. 1, ICERD; art. 1, CEDAW; and art. 2 of the Convention on the Rights of Persons with Disabilities (CRPD). The Human Rights Committee comes to a similar interpretation in its general comment No. 18, paragraphs 6 and 7. The Committee has adopted a similar position in previous general comments.

Permissible scope of differential treatment

13. Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects. A failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority.

Regional

Inter-American Convention on Protecting the Human Rights of Older Persons, 2015

Article 2 Definitions

“Discrimination”: Any distinction, exclusion, or restriction with the purpose or effect of hindering, annulling, or restricting the recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life.

“Multiple discrimination”: Any distinction, exclusion, or restriction toward an older person, based on two or more discrimination factors.

“Age discrimination in old age”: Any distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life.

Content: Affirmation and Scope

1.1 The prohibition of, and guarantee of legal protection against, discrimination against older persons shall apply to every aspect of life without limitation.

1.2 The right shall engage all forms of discrimination against older persons including direct, indirect, by association, by perception or imputation, incitement, vilification, victimization, harassment and denial of reasonable accommodation.

1.3 Specific measures which are necessary to accelerate or achieve de facto equality of older persons shall not be considered discrimination.

1.4 The grounds upon which intersectional and cumulative discrimination may occur shall be comprehensive.

Sources

International

Universal Declaration of Human Rights, 1948

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

International Covenant on Economic, Social and Cultural Rights, 1966

Article 2(2): The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Political and Civil Rights, 1966

Article 2: Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, 1990

Article 7: States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Convention on the Rights of Persons with Disabilities, 2006

Preamble:

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

Article 8 "States Parties undertake to adopt immediate, effective and appropriate measures:

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life"

General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009

10. Both direct and indirect forms of differential treatment can amount to discrimination under article 2, paragraph 2, of the Covenant:

(a) **Direct discrimination** occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant);

(b) **Indirect discrimination** refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.

Private sphere

11. Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

Age

29. Age is a prohibited ground of discrimination in several contexts. The Committee has highlighted the need to address discrimination against unemployed older persons in finding work, or accessing professional training or retraining, and against older persons living in poverty with

unequal access to universal old-age pensions due to their place of residence.² In relation to young persons, unequal access by adolescents to sexual and reproductive health information and services amounts to discrimination.

Madrid International Plan of Action on Ageing, 2002

Political Declaration Article 5

We reaffirm the commitment to spare no effort to promote democracy, strengthen the rule of law and promote gender equality, as well as to promote and protect human rights and fundamental freedoms, including the right to development. We commit ourselves to eliminating all forms of discrimination, including age discrimination.

12. The major United Nations conferences and summits and special sessions of the General Assembly and review follow-up processes have set goals, objectives and commitments at all levels intended to improve the economic and social conditions of everyone. These provide the context in which the specific contributions and concerns of older persons must be placed. Implementing their provisions would enable older persons to contribute fully and benefit equally from development. There are a number of central themes running through the International Plan of Action on Ageing, 2002 linked to these goals, objectives and commitments, which include:

- e) Ensuring the full enjoyment of economic, social and cultural rights, and civil and political rights of persons and the elimination of all forms of violence and discrimination against older persons;
- (f) Commitment to gender equality among older persons through, inter alia, elimination of gender-based discrimination;

13. The promotion and protection of all human rights and fundamental freedoms, including the right to development, is essential for the creation of an inclusive society for all ages in which older persons participate fully and without discrimination and on the basis of equality. Combating discrimination based on age and promoting the dignity of older persons is fundamental to ensuring the respect that older persons deserve. Promotion and protection of all human rights and fundamental freedoms is important in order to achieve a society for all ages. In this, the reciprocal relationship between and among generations must be nurtured, emphasized and encouraged through a comprehensive and effective dialogue.

24. In developing countries and countries with economies in transition, most persons who are now old and who work are engaged in the informal economy, which often deprives them of the benefits of adequate working conditions and social protection provided by the formal sector economy. The life expectancy in many developed countries and countries with economies in transition exceeds the established retirement or pension age. In these countries, moreover, fewer persons are entering the labour market because of the decrease in the birth rate; this trend is often accompanied by age discrimination.

28. Objective 1: Employment opportunities for all older persons who want to work.

(e) Promote self-employment initiatives for older persons, inter alia, by encouraging the development of small and microenterprises and by ensuring access to credit for older persons, without discrimination, in particular gender discrimination;

Issue 2: Universal and equal access to health-care services

70. Primary health care is essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation, and at a cost that the community and country can

² See, further, CESCR general comment No. 6.

afford to maintain at every stage of their development, in the spirit of self-reliance and self-determination. Older persons can experience financial, physical, psychological and legal barriers to health-care services. They may also encounter age discrimination and age-related disability discrimination in the provision of services because their treatment may be perceived to have less value than the treatment of younger persons.

74. Objective 1: Elimination of social and economic inequalities based on age, gender or any other ground, including linguistic barriers, to ensure that older persons have universal and equal access to health care.

(e) Implement international obligations to ensure the access of older persons to primary health care without discrimination based on age or other forms of discrimination;

(f) Enhance the access of older persons to primary health care and take steps to eliminate discrimination in health care based on age and other forms of discrimination;

Regional

Inter-American Convention on Protecting the Human Rights of Older Persons, 2015

Article 2 Definitions

“Discrimination”: Any distinction, exclusion, or restriction with the purpose or effect of hindering, annulling, or restricting the recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life.

“Multiple discrimination”: Any distinction, exclusion, or restriction toward an older person, based on two or more discrimination factors.

“Age discrimination in old age”: Any distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life.

Article 5: Equality and non-discrimination for reasons of age

This Convention prohibits discrimination based on the age of older persons.

In their policies, plans, and legislation on ageing and old age, States Parties shall develop specific approaches for older persons who are vulnerable and those who are victims of multiple discrimination, including women, persons with disabilities, persons of different sexual orientations and gender identities, migrants, persons living in poverty or social exclusion, people of African descent, and persons pertaining to indigenous peoples, the homeless, people deprived of their liberty, persons pertaining to traditional peoples, and persons who belong to ethnic, racial, national, linguistic, religious, and rural groups, among others.

Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa, 2016

Article 3: Elimination of Discrimination Against Older Persons

States Parties shall:

1. Prohibit all forms of discrimination against Older Persons and encourage the elimination of social and cultural stereotypes which marginalise Older Persons;
2. Take corrective measures in those areas where discrimination and all forms of stigmatisation against Older Persons continue to exist in law and in fact; and

3. Support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against Older Persons.

European Union Charter of Fundamental Rights, 2007

Article 21 Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Council of Europe recommendation CM/Rec(2014)2

II. Non-discrimination

6. Older persons shall enjoy their rights and freedoms without discrimination on any grounds, including age.
7. Member States should consider making explicit reference to “age” in their national anti-discrimination legislation.
8. Member States should take effective measures to prevent multiple discrimination of older persons.

ASEAN Declaration of Human Rights, 2012

General Principles

2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.

Content: Equality

2. States Parties shall undertake:

2.1 To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against older persons;

2.2 To take all appropriate steps to ensure formal and substantive equality of older persons, including but not limited to a duty to consider the differential impact of all their decisions, in particular age-based policies, on older persons;

Sources

International

General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009

8. In order for States parties to “guarantee” that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively:³

(a) Formal discrimination: Eliminating formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds; for example, laws should not deny equal social security benefits to women on the basis of their marital status;

(b) Substantive discrimination: Merely addressing formal discrimination will not ensure substantive equality as envisaged and defined by article 2, paragraph 2.⁴ The effective enjoyment of Covenant rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

9. In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health-care facilities.

³ CESCR, general comment No. 16 (2005): The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3).

⁴ See also CESCR general comment No. 16.

Content: Multiple discrimination

2. States Parties shall undertake:

2.3 To prohibit and take all steps to eliminate intersectional discrimination, namely the combined effect of age and another personal characteristic or the combined effect of any two or more characteristics;

2.4 To prohibit and take all steps to eliminate cumulative discrimination and victimisation, namely discrimination and or victimization on a number of occasions over time and or from multiple sources;

2.5 To take all appropriate measures to ensure protection for particular groups of older persons who suffer discrimination and denial of rights on heightened or systemic basis and/or as a common experience;

Sources

International

Convention on the Rights of Persons with Disabilities, 2006

Preamble:

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

Article 8

States Parties undertake to adopt immediate, effective and appropriate measures:

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life"

General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009

Multiple discrimination⁵

17. Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.

Madrid International Plan of Action on Ageing, 2002

47. Older persons with disabilities are also at greater risk of poverty than the non-disabled older persons partly because of workplace discrimination, including employer discrimination, and the absence of workplace accommodation of their needs.

⁵ See para. 27 of the present general comment on intersectional discrimination.

Regional

Inter-American Convention on Protecting the Human Rights of Older Persons, 2015

Article 5: Equality and non-discrimination for reasons of age

This Convention prohibits discrimination based on the age of older persons.

In their policies, plans, and legislation on ageing and old age, States Parties shall develop specific approaches for older persons who are vulnerable and those who are victims of multiple discrimination, including women, persons with disabilities, persons of different sexual orientations and gender identities, migrants, persons living in poverty or social exclusion, people of African descent, and persons pertaining to indigenous peoples, the homeless, people deprived of their liberty, persons pertaining to traditional peoples, and persons who belong to ethnic, racial, national, linguistic, religious, and rural groups, among others.

Council of Europe recommendation CM/Rec(2014)2

II. Non-discrimination

8. Member States should take effective measures to prevent multiple discrimination of older persons.

Content: Ageism, structural and systemic discrimination

2. States Parties shall undertake:

2.6 To take all appropriate steps to eliminate discrimination against an individual and any ageist institutional, systemic or structural practices which affect the human dignity of older persons;

2.7 To take all appropriate steps to eliminate harmful ageist social norms and practices, including traditional practices, which affect the human rights and dignity of older persons;

Sources

General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009

Systemic discrimination

12. The Committee has regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.

Elimination of systemic discrimination

39. States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programmes to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups. Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.

Regional

Inter-American Convention on Protecting the Human Rights of Older Persons, 2015

Article 2 Definitions

“Multiple discrimination”: Any distinction, exclusion, or restriction toward an older person, based on two or more discrimination factors.

Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa, 2016

Article 3: Elimination of Discrimination Against Older Persons

States Parties shall:

1. Prohibit all forms of discrimination against Older Persons and encourage the elimination of social and cultural stereotypes which marginalise Older Persons;
2. Take corrective measures in those areas where discrimination and all forms of stigmatisation against Older Persons continue to exist in law and in fact; and

3. Support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against Older Persons.

Content: Remedies, sanctions and enforcement

2. States Parties shall undertake:

2.8 To ensure the access of older persons to tailored and comprehensive assistance in making claims and accessing justice;

2.9 To ensure the access of older persons to redress and reparation for age discrimination, including where appropriate taking cumulative discrimination into account in any award of damages;

Sources

International

General Comment No. 20, Non-discrimination in economic, social and cultural rights, paragraph 29, 2009

Remedies and accountability

40. National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights. Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, which should be accessible to everyone without discrimination. These institutions should adjudicate or investigate complaints promptly, impartially, and independently and address alleged violations relating to article 2, paragraph 2, including actions or omissions by private actors. Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively. These institutions should also be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies, and State parties should ensure that these measures are effectively implemented. Domestic legal guarantees of equality and non-discrimination should be interpreted by these institutions in ways which facilitate and promote the full protection of economic, social and cultural rights.⁶

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005

II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

⁶ See CESCR general comments Nos. 3 and 9. See also the practice of the Committee in its concluding observations on reports of States parties to the Covenant.

- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (d) Provide effective remedies to victims, including reparation, as described below.

Content: Awareness raising and information

2. States Parties shall undertake:

2.10 To adopt immediate, effective and appropriate measures to promote information, research and public awareness around equality and non-discrimination against older persons, inter alia, by:

- Raising awareness of the rights and capacities of older persons
- Countering any discriminatory systemic ageist perceptions of, and practices towards, older persons
- Promoting awareness of the benefits of age equality and of investing in older age
- Promoting a positive image of ageing
- Undertaking or promoting research on ageing and on issues particularly affecting older persons, and ensuring data is collected, disaggregated, analysed, utilised and disseminated by all ages, and take into account intersectionality
- Providing accessible, appropriate information to older persons on their rights and entitlement to benefits and resources
- Engaging and making older persons partners and active participants in shaping social policies and public programmes which relate to their rights and interests
- Promoting intergenerational interactions and solidarity.

Sources

International

General Comment No. 20, Non-discrimination in economic, social and cultural rights, paragraph 29, 2009

Monitoring, indicators and benchmarks

41. States parties are obliged to monitor effectively the implementation of measures to comply with article 2, paragraph 2, of the Covenant. Monitoring should assess both the steps taken and the results achieved in the elimination of discrimination. National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.⁷

Regional

Inter-American Convention on Protecting the Human Rights of Older Persons, 2015

Article 32

States Parties agree to:

a. Adopt measures to achieve dissemination of, and to progressively educate the whole of society about, this Convention.

b. Foster a positive attitude to old age and dignified, respectful, and considerate treatment of older persons, and, based on a culture of peace, encourage actions to disseminate and promote the rights and empowerment of older persons, and avoid stereotypical images and language in relation to old age;

⁷ See CESCR general comments Nos. 13, 14, 15, 17 and 19, and its new reporting guidelines (E/C.12/2008/2).

- c. Develop programs to sensitize the public about the ageing process and older persons, encouraging the participation of the latter and of their organizations in the design and formulation of such programs;
- d. Promote the inclusion of content that fosters understanding and acceptance of ageing in study plans and programs at different levels of education, as well as in academic and research agendas;
- e. Promote recognition of the experience, wisdom, productivity, and contribution to development that older persons offer society as a whole.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, 2016

Article 19 Awareness on Ageing and Preparation for Old Age

State Parties shall:

1. adopt measures to encourage the development of awareness raising programmes to educate younger population groups on ageing and Older persons to combat negative attitudes against Older Persons; and
2. adopt measures to develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.