

Coalition of Services of the Elderly (COSE) Submission on Equality and Non-discrimination

8th Working Session of the Open-ended Working Group on Ageing, 2017



Introduction

Human rights are universal and older people should enjoy their human rights on an equal basis with others in society. The Philippines has ratified nine international human rights treaties and all of these, with the exception of the Convention on the Rights of the Child, apply to older people as much as they apply to others. Older people's human rights do not change in older age. They still have the same rights as everybody else. Despite this, more often than not we see older Filipinos with less chances of employment and less and unequal access to adequate healthcare and finance. They become subject of discrimination, ridicule and even abuse. Some consider them merely as objects of charity and not individuals with inherent, equal and universal rights as other members of the society.

The data from this submission are mainly drawn from the National Human Rights Situation of Older Persons (2015) drafted by COSE, Commission on Human Rights of the Philippines (CHRP) and Department of Social Welfare and Development (DSWD) with inputs from government agencies, multi-stakeholder dialogues and existing studies. COSE joins the global network of HelpAge International in calling for the UN Convention on the Rights of the Elderly. This paper aims to aid in identifying key elements for a comprehensive normative and policy framework for the protection of the rights of older people, including the respective roles of all stakeholders.

1) Country Constitution and legislations

There is no national policy in the Philippines that explicitly guarantee equality for older persons or people of all ages. However, substantial measures promote special attention to older persons:

- **The 1987 Philippine Constitution.** It has been the declared policy of the Philippine government that “The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full development, arising standard of living and an improved quality of life.”(Article II, Section 9 of the Declaration of Principles and State Policies) In addition, senior citizens were cited as a priority when it was mandated that “the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children.”(Article XIII, Section 2 on Health). More importantly, it is admitted that “It is the duty of the family to take care of its older person members while the State may design program of social security for them.”(Article XV, Section 4 (On the Filipino Family))
- **Republic Act No. 9994 or Expanded Senior Citizens Act of 2010.** Meanwhile, Filipino senior citizens also enjoy the advantage of a “comprehensive” national law that endeavors to promote their welfare by providing specific benefits and privileges. As the third version of the senior citizens act, the Expanded Senior Citizens Act of 2010 aims to augment further the existing programs and services being enjoyed by the elderly. This law also seeks to ensure the effective and efficient implementation of the benefits and discount privileges by clarifying the specific roles and functions of the respective implementing government agencies.
- **RA 10868 or Centenarians Act of 2016** honors Filipinos who have reached 100 years old with a Letter of Felicitation from the Philippine President and a Centenarian Gift in the amount of PhP100,000.00.
- **RA 10645 or An Act Providing for the Mandatory PhilHealth Coverage for All Senior Citizens**, Amending for the Purpose Republic Act No. 7473, As Amended by Republic Act No. 9994, Otherwise Known as the “Expanded Senior Citizens Act of 2010”, mandates PhilHealth, the national health insurance program, to cover all senior citizens, removing the provision that a senior citizen must be indigent to qualify for coverage.
- **Republic Act (RA) 10911 or the Anti-Age Discrimination Act of 2016** was passed to guarantee equality and prohibit age discrimination in employment. Among others, it prohibits the age limits in job advertisement and employers from forcibly laying off and imposing early retirement on employees because of old age.

2) Discrimination

• Employment

As individuals age, remaining in employment becomes significantly more challenging mainly due to barriers like age discrimination and mandatory retirement age of 65. Based on data from the Labor Force Survey (LFS) (2012), employment are lower at more advanced ages. On average one half of older men (55 per cent) over the age of 60 and a third of older women (35 per cent) are employed. The figure, nevertheless, highlights significant diversity amongst older people. While two thirds of men and one half of women are in employment in their early 60s, by their early 70s less than a half of men and a third of women are employed. Data from the LFS (2012) also shows that those individuals working at more advanced ages work fewer hours than their younger counterparts. Two thirds of employed people aged 15-59 (65 per cent) work more than 40 hours per week, but this applies to just half (48 per cent) of over 60s, and a third of over 75s (36 per cent).¹

- **Access to goods and services.** RA 9994 mandates the following: a) 20% discount and value added tax (VAT) exemptions on medicines, professional fees, diagnostic and laboratory fees, certain goods, transportation fare, restaurant and recreational centers,

¹ Authors' calculations based on LFS 2012, Knox-Vydanov, C., Horn, D., Sevilla, A. (2017) Feasibility of a Universal Social Pension in the Philippines

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hotels and similar lodging, admission fees to amusement and leisure centers, and funeral and burial services, and 5% discount for the senior citizens' monthly utilization of water and electricity. However, evidence shows a drastic difference in the implementation of these government programmes across the country with those older people residing in richer Local Government Units (LGUs) having a better chance of accessing privileges than those residing in poorer LGUs. The evidence shows that those older people who are better educated and have a higher income benefit from these programmes more than those in lower income brackets.²

- **Social protection.** The government also has both contributory and non-contributory pension for older persons. However, recent data shows that most Filipinos cannot currently expect to receive a pension in their old age. Slightly over a quarter of senior citizens (29 per cent) receive pensions based on their previous working history (Social Security System, Government Social Insurance System and others) with an additional 17 per cent of older people (1.4 million) expected to receive the social pension in 2016. In 2017, the new administration has allocated budget to cover 34 per cent of the older people (2.8 million). When the coverage of these schemes is combined and followed, around 40 per cent of Filipino older people are left with no pension at all.³ Meanwhile, for many of those receiving a pension, benefits can be low – and this is not only limited to social pensioners. A third of SSS retirees (34 per cent) receive less than PhP 2,000 per month, and half (52 per cent) receive less than PhP 3,000.⁴
- **Health care.** Essential medicines are often unaffordable for older people. Despite discounts in the purchase of medicines, as mentioned above, it is those who are already in a position to afford the medicine who benefit from this privilege. It has no beneficial effect on those who cannot afford to buy medication.⁵ Based on the Impact Evaluation of RA 9994 on Drug Accessibility, 42% of drugstore personnel interviewed, said that senior citizens are still not able to buy their medicines completely because of lower incomes (or limited financial ability) and higher costs of medicines. Further, of all the senior citizens surveyed, less than 50% indicated that they were able to buy all their medications. Adherence to regimen as a result of the provisions of the law was at a low 54%. This was observed among respondents who have schooling beyond elementary education.

3) Inequality of opportunities or outcomes

a) Availability of, access to and quality of health care services

- The Philippine Health Insurance Corp. (Philhealth), as the national health insurance company, provides the widest coverage of healthcare insurance for senior citizens. But much of the benefit is availed of only for actual hospitalization and not much for out-patient services or primary care settings. Besides limited insurance cover for certain types of morbidity, there are also ceilings or prescribed case rates for specific illnesses or medical procedures.
- Further, some of PhilHealth benefit packages explicitly disqualify some age groups. For example, under the Implementing Rules and Regulations of Z Benefit Package⁶, older persons aged 70 years old and above are not qualified to avail the said benefit package.

b) Financial services

- Social Security System members are entitled for a salary loan, a cash loan granted to an employed, currently- paying self-employed or voluntary member. It is intended to meet the member's short-term credit needs. However, to be eligible, the guidelines requires "the member-borrower must be under sixty-five (65) years of age at the time of application".

4) Are there any areas where differential treatment based on old age is explicitly justified?

- **Mandatory age of retirement.** Philippine labor laws are generally governed by the Labor Code (for the private sector) and Civil Service Rules (for the government service). Both provide for a mandatory retirement age of 65 years old.

Normative framework for the right to equality and non-discrimination

Older women's understanding and experience of equality and discrimination in every aspect of their lives reported in this consultation have the following implications for the normative framework for this area of rights:

Equality

- Equality in older age is the full participation and inclusion of older people in all aspects of society based on the equal respect for the dignity of older persons.
- The right should contain a range of general obligations on States to ensure both formal and substantive equality in older age, including a duty to consider the differential impact of all their decisions, in particular age-based policies, on older people.
- Special measures, namely proactive measures that favour older people in order to ensure equality and non-discrimination in practice and a genuine benefit to address disadvantage, should be allowed.

All forms of discrimination

- The prohibition of and guarantee of legal protection against discrimination in older age should apply to every aspect of life.
- All forms of discrimination should be prohibited, including direct, indirect, by association, by perception or imputation, and harassment.

² Theresa W Devasahayam (Ed.) *Gender and Ageing South East Asian Perspective*, 2014, page 290 cited in National Human Rights Situation of Older Persons (2015)

³ Given that some older people may be in receipt of more than one pension, total coverage may be lower in reality.

⁴ Knox-Vydmanov, C., Horn, D., Sevilla, A. (2017) Feasibility of a Universal Social Pension in the Philippines

⁵ Theresa W Devasahayam (Ed.) *Gender and Ageing South East Asian Perspective*, 2014, page 290

⁶ A new case type Z under the PhilHealth classification of illnesses covers for a unique set of catastrophic illnesses defined in PhilHealth Circular No. 29 s. 2012; and a corresponding benefit package called the Z Benefit Package was developed (Phil.Health Circular No. 30 s.2012)

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- The prohibition of discrimination in older age should not be subject to a wider range of exceptions to the principle of equal treatment than is permitted for any other prohibited ground. Any exceptions, including age proxies, require specific justification.

Multiple discrimination

- Intersectional discrimination, namely the combined effect of age and another personal characteristic or the combined effect of any two or more characteristics, should be prohibited.
- Cumulative discrimination, namely discrimination on a number of occasions over time, should be prohibited.
- The intersectional and cumulative discrimination experienced by older women should be highlighted.

Ageism and structural discrimination

- Both discrimination against an individual and harmful ageist social norms and practices should be prohibited.
- States should have an obligation to take steps to eliminate harmful ageist social norms and practices,

Remedies, sanctions and enforcement

- States should assist older persons in making claims and accessing justice.
- States should take account of accumulating discrimination when fashioning redress and reparation for age discrimination, including where appropriate in any award of damages.