

Submission to the Open-ended Working Group on Ageing: Equality and non-discrimination

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1. Introduction

This paper complements a shorter, summary submission to the Open-ended Working Group on Ageing (OEWG) by an informal group brought together on their own initiative to respond to the call of the Chair of the UN Open-ended Working Group on Ageing (OEWG) inviting stakeholders to contribute ideas and proposals on the possible elements of a new international instrument. The group comprises a small number of representatives of NGOs and legal experts with the immediate goal to provide expert input that will support the work of civil society as well as help frame the discussion at the OEWG.

The group was formed as an interim arrangement in response to the need to reply to the Chair's call within a short timeframe. As a self-appointed group, it cannot reflect the diversity of the stakeholders involved in the OEWG, whose opinions need to inform the next steps. Neither do its views necessarily build on the broad and consensual positions of the organisations that its members represent. This contribution should therefore be considered as complementary to those submitted by organisations accredited to the OEWG and by no means as replacing or undermining the views of those organisations.

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2. The right to equality and non-discrimination

2.1. Ageism, equality and non-discrimination

2.1.1 Ageism

Unlike other stages of our lives, the predominant attitude towards older age is that it is a time of decline, of loss, of vulnerability and dependency. Older persons are considered a burden on society, useless and obsolete with no aspirations or future. Assumptions are made about people's capacity based on their older age. Older persons are treated with pity and charity and they are given fewer opportunities for growth and prosperity. This ageism is deeply rooted and often unrecognised in society, in policies, in law, in institutions, in the media and in our individual behaviour and attitudes since distinctions on the basis of age are often considered as 'normal', 'justifiable' or 'inevitable'.

Ageism results in prejudicial and stigmatising attitudes and behaviour that belittle, patronise and exclude older persons, deny them autonomy, independence and dignity, and create barriers to enjoyment of their human rights on an equal basis with others. It is manifested in stereotyping, prejudice, discrimination, harassment, vilification, abuse, exploitation, neglect and violence. It results in social injustice, exclusion and discrimination in every aspect of life including but not limited to physical and mental health care, social care, financial services, employment, access to goods and services, inheritance and property, taxation, insurance and migration.

2.1.2 How we define older age

How older age is defined and responded to is determined by prevailing social norms and constructs. Dividing life into different stages has long been used as a way to understand our lives. How we demarcate and define these stages is affected by the social, cultural, demographic, environmental and economic context in which we live. So too is the timing of the major transitions and events in our life course. And this is dynamic. The lines between different stages of life are becoming increasingly blurred and as populations age and people live longer, older age is understood and is perceived as occurring later in our lives. This is reflected in how people see themselves and in laws and policies. Social gerontology is moving away from the idea of the 'lifecycle' which comprises a series of discrete stages towards the concept of the 'lifecourse' which sees ageing as an ongoing process (from cradle to grave).

People are also treated as "old" because their chronological age is perceived by others to make the person "older". Generational tensions are often based around beliefs, perceptions and stereotypes about chronological age. Generational tensions derive from the values we draw from an imaginary, overly simplistic age queue where "as long as the line keeps moving, everyone gets his or her privileged turn. However those at the back of the line are dependent on those at the front transitioning away in order to keep the line moving."²

Whether someone is considered to be, and treated as, an older person is not always about actual chronological age. Instead people are often considered to be an older person based on stereotypes such as whether they are retired, have grandchildren, grey hair or wrinkles, or whether they require different types of support.

² Susan T. Fiske* and Michael S. North, A prescriptive intergenerational-tension ageism scale: Succession, identity, and consumption (SIC), *Psychological Assessment*, Vol 25(3), Sep 2013, 706-713.

Cultural, political, socio-economic and other factors can have a bearing on these characteristics used to define older age. Why, when and whether individuals self-identify as being older can also vary. The “life-course” approach is embedded in the work of the World Health Organisation and is driving its work towards a decade of Healthy Ageing 2020-2030. Variations in life expectancy, from between 50 and 84 years³ (both sexes), further reduces the relevancy of chronological age as the primary measure of ageing.

There is, therefore, no specific or universal age at which a person can or is likely to experience ageism and related discrimination on the basis of older age.

2.1.3 Age categories

Age categories are largely used by society as a way to attribute rights, rewards, responsibilities and characteristics.⁴ Not only is it ageist to assume that the individual shares the characteristics of everyone else in the age group, but it rarely reflects the actual situation of older persons and results in unjustified age distinctions. The actual chronological age at which people experience events varies from person to person and one context to another. This is true for all age groups, but even more for older age groups where the diverse trajectories, life experience, health and wealth status render comparisons between people of the same age even more difficult.

In the labour market age limits in access to training impede older workers from advancing and being competitive in their field, which can perpetuate a circle of long-term unemployment in case of job loss. As long as prejudicial and unsupported assumptions about one’s capacity to work beyond a certain age are retained, the labour market will not be able to benefit from the experience, skills and knowledge of the individual older worker who is able and wishes to continue working.

However, age proxies are also used outside the labour market in particular in access to health, housing, public services, education and social care. For example, within the health care system because health problems in older age are seen as normal there are very low expectations of what can be achieved by prevention and intervention and several studies have shown that older persons receive less attention, fewer surgical treatments or can even be denied care on the basis of their age. For example, age limits for breast cancer screening exist in various countries despite research that shows that the probability of developing breast cancer does not decrease with age. Age limits also exist in access to mobility allowances and disability benefits rather than on the basis of individual need and equal opportunities (as far as their individual health status permits). In addition to calculating the costs of equal treatment we need to calculate the costs of inequality in terms of sickness, ill-treatment, premature death, burden on families and the costs to the social security budget when avoidable conditions are not treated/prevented resulting in long-term needs for care, and support but also more acute intervention.

2.2 Equality in older age

The principle of non-discrimination requires that comparable situations are treated in the same way but where people are not in a comparable situation, they should be treated differently.

³ <http://www.who.int/mediacentre/news/releases/2016/health-inequalities-persist/en/>

⁴ Bernice L. Neugarten, ‘Age Distinctions and their Social Functions’ in Dail. A. Neugarten (ed.) *The Meanings of Age: Selected Papers of Bernice L. Neugarten* (1996) pp.24-25, 59-60

In practical terms, this means that people should be treated equally regardless of age whilst simultaneously, differential treatment should be permitted in order to ensure equal opportunity or equal access to certain goods and services. For example distinctive types of health services must be available to older persons and to younger people who may have different health needs if both are to enjoy their right to health.

3. Non-discrimination and equality under human rights law

3.1 International

The foundation of equality under international human rights law is Article 1 of the Universal Declaration of Human Rights (UDHR) which states that 'all human beings are born free and equal in dignity and rights'. This means that every person, regardless of their age, is of equal worth and should be afforded equal protection of their rights. The right to equality before the law and non-discrimination in the enjoyment of relevant rights under each treaty is recognized in the UDHR,⁵ in the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶ and the International Covenant on Civil and Political Rights (ICCPR)⁷ and in the subsequent international human rights treaties for children,⁸ women,⁹ persons with disabilities¹⁰ and migrant workers¹¹. The application of Article 26 of the ICCPR has been interpreted to extend beyond just the articles of the ICCPR itself to a general obligation not to enact discriminatory laws or apply laws in a discriminatory way.¹²

There have been different analyses of the core obligation of non-discrimination. For example, at a meeting in 2008 organised by the Equal Rights Trust an international group of 128 jurists adopted a Declaration of Principles on Equality.¹³ This Declaration specifically included age discrimination at Article 5.

Nonetheless, discrimination on the basis of age is only explicitly prohibited in one international human rights treaty, the International Convention on the Rights of Migrant Workers and their Families (ICMW) and such protection is contingent on being a migrant worker or a member of their family.¹⁴ Age is not explicitly mentioned in the list of prohibited grounds in the non-discrimination articles of the other international human rights treaties.

Despite these lists of prohibited grounds being illustrative and non-exhaustive, this lack of detailed and explicit mention has rendered age discrimination less visible in implementation

⁵ Article 2, UDHR, 1948

⁶ Article 2, ICESCR, 1966

⁷ Article 2 and Article 26, ICCPR, 1966

⁸ Article 2, Convention on the Rights of the Child (CRC), 1989

⁹ Article 2, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

¹⁰ Article 5, Convention on the Rights of Persons with Disabilities (CRPD), 2006

¹¹ Article 7, International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICMW), 1990

¹² Office of the High Commissioner for Human Rights, *Normative standards in international human rights law in relation to older persons, Analytical Outcome Paper*, page 8, August 2012

¹³ <http://www.equalrightstrust.org/content/declaration-principles-equality>

The Declaration has since been signed by many more.

¹⁴ Article 7, International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICMW), 1990

and monitoring of these treaties.¹⁵ In addition ‘the true nature of this right is not as yet fully worked out in different states and the jurisprudence of various courts is too little for judge made law to fill the gap adequately’.¹⁶ The situation is particularly concerning given that research shows that ageism may be more pervasive than sexism and racism.¹⁷

3.2 Regional

At the regional level, age is not explicitly listed as a prohibited grounds in the American Convention on Human Rights (1969, Article 1) but discrimination based on the age of older persons is prohibited under the Inter-American Convention on Protecting the Human Rights of Older Persons (2015, Article 5). Similarly the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa (2016) prohibits all forms of discrimination against older persons (Article 3), although the African Charter itself does not explicitly list age as a prohibited ground (1981, Article 2). However, the African Charter does create a positive action duty to take special measures in Article 18(4): *The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.*

Age is not explicitly listed as a ground for discrimination in the European Convention on Human Rights and Fundamental Freedoms (1950, Article 14) nor in the non-discrimination clause in the Revised European Social Charter (1996, Article E). Age is, however, listed as a prohibited ground in of the Charter of Fundamental Rights of the European Union (2007, Article 21). The Council of Europe’s Recommendation CM/Rec(2014)2 of the Committee of Ministers to member states on the promotion of the human rights of older persons (2014, paragraphs 6-8) has recognised the gap in the protection of age discrimination and urged member states to make explicit reference to “age” in their national anti-discrimination legislation. However this is merely a recommendation and not a binding obligation.¹⁸

There is no binding regional Asian human rights treaty that addresses age discrimination, although the non-binding sub-regional ASEAN Declaration on Human Rights (2012) guarantees that everyone is entitled to the rights set out in that instrument ‘without distinction of any kind, such as ... age ...’.

3.3 National

At the national level, constitutional and legislative guarantees against age discrimination vary. The constitutions of very few countries provide explicit guarantees of equality and non-discrimination on the basis of age. Many constitutions contain general guarantees of equality which may in theory apply to age, but which may not be so applied or provide limited protection in practice. Some countries have no legislation prohibiting age discrimination in any area of life. Where there is legislation prohibiting age discrimination, it may be limited to specific areas of life or may permit discrimination on the grounds of age in instances where it does not permit discrimination based on other grounds. [See Annex 1 for illustrative examples].

¹⁵ Office of the High Commissioner for Human Rights, *Normative standards in international human rights law in relation to older persons, Analytical Outcome Paper*, page 8, August 2012

¹⁶ Robin Allen, *Discussion papers: Legal issues for strengthening international legislation on the rights of older person*, Age UK

¹⁷ Educational Gerontology (2013): Perceived Age, Gender, and Racial/Ethnic Discrimination in Europe: Results From the European Social Survey, Educational Gerontology, DOI: 10.1080/03601277.2013.845490

¹⁸ http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/cddh-age/default_EN.asp

3.4 Differential treatment

Differential treatment is where the prohibited ground (for example age or sex or race) is taken as the basis for treatment. An alternative formulation is that treatment explicitly or in substance based on a prohibited ground is not permitted where it has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights or freedoms.¹⁹ However, differential treatment based on a prohibited ground is not always considered impermissible discrimination under international or national law.

Notably, the Committee on Economic, Social and Cultural Rights in 1996 was not able to conclude that age discrimination was comprehensively prohibited by the ICESCR and admitted there were areas where age discrimination was acceptable.²⁰ In 2009 the Committee further concluded that discrimination on the basis of 'age is prohibited in several contexts',²¹ thereby implying that not all differential treatment based on age will be discrimination prohibited by international law, if it can be shown to be objective or reasonable.

At the national level, the vast majority of legislation across European countries prohibiting age discrimination in employment allows differential treatment on the basis of age if the act is justified by a legitimate aim and if the means used to achieve that purpose are necessary and appropriate.²² Legitimate aims may include legitimate employment policy, labour market and vocational training objectives, and the use of age criteria in fixing retirement benefits.²³

The key question is whether differential treatment on the ground of age that is currently considered acceptable in legislation and policy complies with the human rights principles of non-discrimination and equality, or whether the justification tests used to assess acceptability are contaminated by ageist stereotypes, assumptions and exclusionary attitudes.

A recent example of differential treatment on the basis of age that was successfully challenged is that of age limitations on organ transplantation in Israel. In 2013 a committee was appointed by the Ministry of Health to examine the upper age limit criteria for inclusion in the organ transplantation lists. Having reviewed both medical and ethical considerations, the committee concluded that eligibility should be considered on an individual basis and not on a rigid chronological age limit. They also concluded that recipients' chronological age should not be considered in organ allocation because favouring recipients with assumed longer life expectancies placed greater value on the lives of younger people than of older persons.²⁴

3.5 Special measures, positive action or affirmative measures are proactive measures taken by a government or private institutions to remedy the effects of past and present discrimination by instituting preferences that favour Rec(2014)2 Rec(2014)2 members of disadvantaged societal groups. Such preferential treatment is inherent in the notion of

¹⁹ Human Rights Committee, General Comment No. 18: 'Non-discrimination' HRI/GEN/1/Rev.4 (1989)

²⁰ General Comment No. 6, The economic, social and cultural rights of older persons, para 12, 1996

²¹ General Comment No. 20, Non-discrimination in economic, social and cultural rights, para. 29. 2009

²² Such national legislation is based on European Union Directive 2000/78/EC which establishes a general framework for equal treatment in employment and occupation.

²³ EU Directive 2000/78/EC, Article 6

²⁴ Katvan et al, 'Age limitation for organ transplantation: the Israeli example', *Age and Ageing*, 2016:0:1-3

substantive equality since the principle of non-discrimination requires that comparable situations are treated in the same way but that where people are not in a comparable situation, they should be treated differently.

Special measures are temporary measures to ensure equality in practice. Affirmative measures or positive action are more systemic and longer-term measures as part of an anticipatory duty to ensure equality for all older persons. For example, in the labour market these may include flexible working, working adaptations, arrangements for caregiving responsibilities and (re)training.

Reasonable accommodation, in contrast, refers to individual accommodation measures for individuals, rather than systemic measures, for example providing a bigger computer screen in the workplace. Reasonable accommodation is a right and duty under Article 5 (3) of the Convention on the Rights of Persons with Disabilities, and is defined as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".²⁵

Another example of affirmative or positive action would be where there is a need to take into account intersectional disadvantages where indigenous persons have much lower life expectancy than non-indigenous persons. Because of this, care and support for independent living is available to indigenous persons from a younger age. This also reflects a lifecourse approach.

4. Consequences for a normative framework

4.1. Definitions

4.1.1 Older age/older person

A static, single chronological age-based definition of an older person or older age is an inappropriate basis for the right to non-discrimination and equality in older age if the right is to effectively provide a guarantee against ageism and all forms of discrimination in older age, and respond to the lived experience of older persons.

4.1.2 Equality in older age

The full participation and inclusion of older persons in all aspects of society is based on equal respect for the dignity of older persons.

Note: In this definition equality is based on dignity. Equality based on dignity must enhance rather than diminish the status of individuals, so action cannot be based merely presumed lack of merit or lack of capacity, neither is it possible to treat older persons differently to promote the rights of another group if this action diminishes older persons.²⁶

4.1.3 Discrimination

²⁵ Article 2, Convention on the Rights of Persons with Disabilities

²⁶ Sandra Fredman, *The Age of Equality* in Sandra Fredman and Sarah Spencer (ed) 'Age as an Equality Issue', 2003

Definition of discrimination in international law:

Any distinction, exclusion, restriction or preference which is based directly or indirectly on a number of identified grounds and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights or freedoms.²⁷

Proposed definition of discrimination in older age:

Discrimination in older age can be defined as any act or omission in relation to that person or someone associated with them, including a policy, law, rule, practice, requirement, condition or situation, which directly or indirectly and without objective justification:

- a) Creates less favourable treatment
- b) Imposes burdens, obligations or disadvantages on
- c) Withholds benefits, opportunities or advantages from
- d) Undermines the human dignity of
- e) Adversely affects the equal enjoyment of rights and freedoms by

any older person on the basis of their age or perception of their age, or on the combined effect of their age and another personal characteristic, or the combined effect of any two or more characteristics, or which causes or perpetuates systemic disadvantage.²⁸

4.1.4 Special measures

Special measures are proactive temporary measures taken by a government or private institutions to remedy the effects of past and present discrimination by instituting preferences that favour members of disadvantaged societal groups so as to create equality.

4.1.5 Affirmative measures or positive action

Affirmative measures or positive action are systemic and longer-term measures as part of an anticipatory duty to ensure equality for all older persons.

4.1.6 Reasonable accommodation

Reasonable accommodation is necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to older persons the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

4.2 Normative content of the right to equality and non-discrimination

4.2.1 General obligations to ensure equality in older age

There are a number of general obligations on States to ensure both formal and substantive equality in older age:

- Adopt all appropriate legislative, administrative and other measures for the implementation of rights.
- Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, policies, customs and practices that constitute discrimination against people in older age based on age, either as a sole factor or in combination with another factor or factors which can intersect or accumulate over time, including sex, disability, religion or conviction, political or other opinion or belief, physical, mental or cognitive health, degree of care and assistance required, marital

²⁷ Human Rights Committee, General Comment No. 18: 'Non-discrimination' HRI/GEN/1/Rev.4 (1989)

²⁸ This broad approach is based on the South African Promotion of Equality and Prevention of Unfair Discrimination Act 2000.

or family status, economic status, access to technology, sexual orientation, gender identity or gender expression, visa or migrant status, refugee status, being homeless, being deprived of liberty, indigenous, ethnic, racial, minority, national or linguistic status, property, geographical location, citizenship, nationality, HIV status, birth or any other condition or status.

- Conduct mandatory equality assessments in relation to all new legislation.
- Take special measures or positive action to ensure equality in practice.
- Guarantee the protection and promotion of the human rights of older persons where relevant in all policies and programmes.
- Refrain from engaging in any act or practice that is discriminatory.
- Ensure under their obligation of due diligence that non-State actors, for example, private sector contractors and enterprises, act in conformity with the rights of older persons.
- Take all appropriate measures to eliminate discrimination against people in older age based on age (including “ageing” and an “age group”), either as a sole or dominant factor or in combination with another factor or factors by non-State actor.
- Undertake or promote research on ageing and on issues particularly affecting people in older age
- Ensure data is collected, disaggregated, analysed, utilised and disseminated by all ages and sex.
- Provide accessible, appropriate information to older persons on their rights and entitlement to benefits and resources.
- Take all appropriate measures to allow for older person’s full and effective participation in society and decision-making processes.
- Develop policies and take all appropriate measures, including awareness campaigns, to combat ageism and promote intergenerational cooperation and positive images of ageing, encouraging the dignified and respectful treatment of people in older age.

4.2.2 Material scope

The right should provide for protection against discrimination in every aspect of life without limitation.

4.2.3 Forms of discrimination and unequal treatment

The right should provide protection against all forms of discrimination in older age including direct and indirect discrimination, discrimination by association, by perception or imputation, and harassment on the grounds of actual, perceived or imputed older age.

4.2.4 Multiple discrimination

Intersectional: The right should provide for a claim on any type of ground or combination of grounds. States should undertake to protect older persons from discrimination on the basis of the combined effect of their age and another personal characteristic, whether or not age is the dominant or substantial reason,²⁹ or the combined effect of any two or more characteristics.

Cumulative: The right should provide protection against discrimination on a single occasion or a number of occasions over time, across domains, across generations, or across a life course.

²⁹ See the Australian Age Discrimination Act 2004 (Cth), Section 16, http://www.austlii.edu.au/au/legis/cth/consol_act/ada2004174/s16.html

The grounds upon which multiple discrimination may occur should include but not be limited to, sex, disability, religion or conviction, political or other opinion, physical, mental or cognitive health, degree of care and assistance required, type of and location where care and support is received, place of residence, marital and family status, economic status, access to technology, sexual orientation, gender identity or gender expression, migrant status, refugee status, being homeless, being deprived of liberty, indigenous, ethnic, racial, minority, national or linguistic status, property, geographical location, citizenship, nationality, HIV status, birth or any other condition or status.

4.2.5 Individual instances of discrimination and structural and systemic ageism

In order to provide for protection against structural and systemic ageism, the right should include obligations on States to:

- raise awareness of the rights and capacities of older persons
- counter any discriminatory systemic ageist perceptions of and practices towards older persons and older age
- eliminate any harmful traditional practices which adversely affect the human dignity or personal security of older persons
- eliminate any institutional, systemic or structural practices which adversely affect the human rights and dignity of older persons

4.2.6 Differentiated rights for particular groups of older persons

An inclusive list of prohibited grounds in a non-discrimination article does not preclude the possibility of additional articles providing protection for particular older persons where discrimination and denial of rights is heightened, systemic and/or a common experience.

For example, the human rights challenges faced by older women, in particular, are extremely complex and require specific and dedicated attention. Gender-based discrimination often accumulates over time and can intersect with age-based discrimination, creating new and distinct forms of discrimination in older age, particularly for older women who experience different forms of discrimination in many parts of their lives. Older persons living in institutions, for example nursing or residential care homes or older persons under guardianship, face particular challenges to their human rights, as do older indigenous persons whether by virtue of lower life expectancy, or the effect of historic injustices as a result of colonisation or dispossession.

However, dedicated articles for some particular groups of older persons should not replace a more exhaustive and inclusive list of prohibited grounds.

4.2.7 Special measures

Special measures, positive action should be provided for to ensure equality and non-discrimination in practice and a genuine benefit intended to address disadvantage.

4.2.8 Remedies, sanctions and enforcement

States should take account of accumulating discrimination when fashioning redress and reparation for age discrimination, including where appropriate in any award of damages.³⁰

To assist older persons in making claims States should ensure older persons' access to

- information around available remedies and how to access them
- legal services, including legal assistance and legal aid on an equal basis with others

³⁰ Based on Austrian Disability Equality Act

- a hearing within a reasonable time, with special measures in situations of immediacy
- accommodations in judicial proceedings, including making technology accessible, to facilitate their effective role as participants at all stages of legal proceedings on an equal basis with others

4.2.9 Elimination of ageism

To ensure information, research and public awareness around equality and non-discrimination in older age States should

- raise awareness of the rights and capacities of older persons
- counter any discriminatory systemic ageist perceptions of and practices towards older persons and older age
- eliminate any harmful traditional practices which affect the human dignity of older persons
- promote awareness of the benefits of age equality and of investing in old age
- promote a positive image of ageing
- eliminate any ageist institutional, systemic or structural practices which affect the human dignity of older persons
- undertake or promote research on ageing and on issues particularly affecting people in older age, and ensuring data is collected, disaggregated, analysed, utilised and disseminated by all ages and sex
- provide accessible, appropriate information to older persons on their rights and entitlement to benefits and resources
- engage and make older persons partners and active participants in shaping social policies and public programmes which relate to their rights and interests.

4.2.10 Exceptions

Exceptions diminish the importance of age discrimination and the seriousness with which age discrimination is treated compared to other forms of discrimination. Exceptions reinforce and perpetuate negative ageist attitudes and practice and magnify the way discrimination is felt.

Therefore:

- The prohibition of discrimination and unequal treatment 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 and review under a duty to consider the differential impact of all decisions on older persons.
- Permissible justifications must not undermine human rights principles including those of non-discrimination, equality and dignity.

Annex 1: Prohibition of age discrimination

Source: National Human Rights Commission of Korea, Issue Analysis and Specific Recommendations on the Human Rights of Older Persons in ASEM Countries, 2016

Member State	Legislation specifically prohibiting age discrimination	Legislation specifically prohibiting age discrimination in employment	Areas of life where age discrimination is prohibited	Exceptions allowed	Multiple discrimination is provided for
Australia	The Age Discrimination Act 2004 (Cth) State or territory laws prohibit age discrimination	Fair Work Act 2009	Employment, education, access to premises, provision of goods, services and facilities, provision of accommodation, disposal of land, admin of Commonwealth laws and programmes, requests for info on which age discrimination may be based	Yes	No
Austria	Equal Treatment Act 2004 and Federal Equal Treatment Act 2004	Equal Treatment Act 2004 and Federal Equal Treatment Act 2004	Employment	Yes	Yes
Bangladesh	No (Constitution, 1972, General equality provision)	No	N/A	N/A	N/A
Belgium	Anti-Discrimination Act 2007	Anti-Discrimination Act 2007	Supply of goods and services, social protection, including social security and health care, social benefits, employment, access to and participation in or any other exercise of an economic, social, cultural, or political activity accessible to the public	Yes	No
Brunei Darussalam	No	No	N/A	N/A	N/A
Bulgaria	Protection Against Discrimination Act 2004	Protection Against Discrimination Act 2004 Labour Code 2001	Universal material scope covering all areas of life	Yes	Yes
Cambodia	No (Constitution 1993, amended 2008, Age not listed in equality provision)	No	N/A	N/A	N/A
China	Law on the People's Republic of China on the Protection for the Rights and Interests of the Elderly, 1997	No	Discriminating against, insulting, maltreating or forsaking the elderly	Yes	Unknown

Croatia	Anti-Discrimination Act 2008	Labour Act 2004	Employment, education, science and sports, social security, health protection, judiciary and administration, housing, public information and the media, access to and provision of goods and services, membership of trade unions, CSOs, political parties or any organization, access to participate in cultural and artistic creation	Yes	Yes
Cyprus	No (Constitution of the Republic of Cyprus, Article 28, General prohibition, not age specific)	Law 58(I)/2004 on the Equal Treatment in Employment and Occupation Law, 2004	Private and public; social protection, social security, medical care, education, social advantages at least where state provide, access to goods and services, housing	Yes	No
Czech Republic	Anti-Discrimination Act (Act No. 198/2009)	Labour Code (Act No. 262/2006 Coll) and Employment Act (Act No. 435/2004 Coll.)	Health care, education, social protection, social advantages, access to goods, services, consumer protection and housing.	Yes	No
Denmark	Danish Anti Discrimination Act amended 2004	Act on the Prohibition of Discrimination in the Labour Market, Act No. 31, 2005, amended 2008	Employment	Yes	No
Estonia	Equal Treatment Act 2008	Employment Contracts Act 1992, amended 2004	Employment, education	Yes	No
Finland	Non-Discrimination Act 2014, as amended	Employment Contracts Act No. 55, 2001, as amended	All public and private activities, excluding private life, family life and practice of religion	Yes	No
France	French Penal Code, Articles 225-1 and 225-2	French Labour Code, Law of 27 May 2008	Employment, education, housing, social protection, goods and services	Yes	No
Germany	General Equal Treatment Act 2006	General Equal Treatment Act 2006	Employment, social security, social benefits, education, general civil law	Yes	Yes
Greece	Anti-Discrimination Law 3304/2005 Law	Anti-Discrimination Law 3304/2005 Law	Employment, social protection, social security and health care, education, access to and supply of goods and services, including housing	Yes	No
Hungary	Act CXXV 2003 on Equal Treatment and the Promotion of Equal Opportunities	Act CXXV 2003 on Equal Treatment and the Promotion of Equal Opportunities	Employment, social security, healthcare	Yes	Yes
India	No (Constitution of India, Article 14, General equality provision)	No	N/A	N/A	N/A

Indonesia	No (Constitution of the Republic of Indonesia, 1945, amended 2002, General discrimination prohibition)	No	N/A	N/A	N/A
Ireland	Equal Status Acts 2000 - 2015	Employment Equality Acts 1998 - 2015	Goods and services, employment	Yes	No
Italy	No (Constitution of Italy, Article 3, General prohibition, not age specific)	Worker's Statute, 1970, Article 15 Law No. 216/2003	N/A	Yes	No
Japan	No (Constitution of Japan, 1947, General equality provision, age not listed)	No (Act Concerning the Stabilization of Employment of Older Persons, amended 2004, Promotes employment but does not prohibit age discrimination)	N/A	N/A	N/A
Kazakhstan	No (Constitution of the Republic of Kazakhstan, 1995, General equality provision, age not listed)	No	N/A	N/A	N/A
Lao PDR	No	No	N/A	N/A	N/A
Latvia	No (Constitution 1922, General prohibition, not age specific)	Latvian Labour Law 2001, amended 2011	N/A	Yes	No
Lithuania	Law on Equal Treatment 2003, amended 2008	Labour Code, 2002, amended 2005	Employment, education, provision of goods and services,	Yes	No
Luxembourg	Discrimination Law of 28 November 2006	Discrimination Law of 28 November 2006	Employment, education, housing, social protection, good and services, social benefits	Yes	No
Malaysia	No (Constitution of Malaysia, 1957, General equality provision)	No	N/A	N/A	N/A
Malta	No (Equal Treatment of Persons Order, 2007, General prohibition, not age specific)	Employment and Industrial Relations Act, 2002, amended 2004	Social protection, including social security and healthcare, social advantages, education, access to and supply of goods and services, including housing, and access to any other service as may be designated by law for the purposes of the regulation	Yes	No

Mongolia	Constitution of Mongolia, Art. 14.2	Employment Promotion Act, 2001, amended 2014	Any form of discrimination	Unknown	No
Myanmar	No	No	N/A	N/A	N/A
Netherlands	No (Constitution of the Kingdom of the Netherlands, 2002, General equality provision)	Equal Treatment in Employment (Age Discrimination), 2004	Education and employment related education	Yes	No
New Zealand	Human Rights Act 1993, Art. 21	Employment Relations Act, 2000, reprint at April 2016	Employment, partnerships, industrial and professional bodies, access to goods and services, provision of land/housing, accommodation	Yes	Yes
Norway	No (Constitution Article 98, revised 2014, General prohibition, not age specific)	Working Environment Act, 2005, amended 2012	Employment	Yes	No
Pakistan	No (Constitution 2012, General Equality provision)	No	N/A	N/A	N/A
Philippines	No	Anti-Age Discrimination in Employment Act, Republic Act 10911, 2016	Employment	Yes	Unknown
Poland	Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (ETA), 2011	Labour Code, 1974, amended 2015	Employment	Yes	No
Portugal	No (Constitution 2005, General equality provision, not age listed)	Labour Code Act No.99, 2003, amended 2015	Employment	Yes	No
Republic of Korea	No (Constitution of the Republic of Korea, 1948, amended 1987, General equality provision, age not listed)	Employment and Aged Employment Promotion Act, 1991, amended 2008	Employment	Yes	No
Romania	Anti-discrimination Law (GO 137/2000) amended 2013	Labour Code, amended 2011	All areas of public life	Yes	Yes
Russian Federation	No (Constitution of Russia, age not listed, falls under 'under circumstances')	Labour Code, 2001	Employment	Yes	Unknown
Singapore	No (Constitution of the Republic of Singapore, 1965, amended 2015, General equality provision,	Retirement Age Act 1993, Act No.14, 1993, amended 1998	Employment but limited to unlawful dismissal below the age of 60	Yes	Unknown

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	age not listed)				
Slovakia	Anti-Discrimination Act 2004	Labour Code 2001 - 2011	Social protection, education, access to goods and services, housing, employment	Yes	No
Slovenia	Act Implementing the Principle of Equal Treatment Act 2004, amended 2007	Employment Relationship Act No.2006, 2002	All areas of public life	Yes	No
Spain	Law 62/2003 of 30 December 2003, amended 2014	Workers' Statute 1995	Employment, social protection, social advantages, education, goods and services	Yes	No
Sweden	Discrimination Act 2008	Discrimination Act 2008	Employment, goods and services, including housing, social protection, education	Yes	No
Switzerland	Swiss Federal Constitution Article 8.2	Swiss Code of Obligations	All areas of public life	Unknown	Unknown
Thailand	Constitution of the Kingdom of Thailand, approved by referendum August 2016	No	Unknown	Unknown	Unknown
UK	Equality Act 2010 (GB). There is currently no protection in Northern Ireland.	Equality Act 2010	Employment, provision of goods, facilities and services, exercise of public functions, running of private clubs and associations, education, housing	Yes	Yes
Viet Nam	Law on the Elderly 2009/10 - Art 9.1	No (Labour Code 2012, General prohibition of discrimination)	Insulting, ill-treating or hurting, persecuting, discriminating against the elderly	Unknown	Unknown

Source: National Human Rights Commission of Korea, Issue Analysis and Specific Recommendations on the Human Rights of Older Persons in ASEM Countries, 2016
 Table compiled from multiple sources including www.agediscrimination.info; European Equality Law Network <http://www.equalitylaw.eu>; Equinet European Network of Equality Bodies <http://www.equineteurope.org>; Legislationonline <http://www.legislationline.org/topics/topic/84>; Williamson C, *Policy Mapping on Ageing in Asia and the Pacific Analytical Report, HelpAge International*, 2015, <http://ageingasia.org/mapping-of-ageing-policies/>; Ghosheh, *Age discrimination and older workers: Theory and legislation in comparative context*, ILO, 2008