

# Republic of Korea

## National legal study on ageism and age discrimination

This study has been produced in connection with HelpAge International's global report, *Advancing equality for older people* →



Under international human rights law, States agree to combat discrimination and make progress towards equality. This requires the adoption of comprehensive anti-discrimination legislation, which prohibits all forms of discrimination in all areas of life on an open-ended and extensive list of grounds, including age.<sup>1</sup> The law should establish the framework for promoting equality for older people, and put in place the necessary enforcement and implementation mechanisms needed to ensure access to justice and remedy for victims.

Despite the adoption of an age-specific equality law, the legislative framework of the Republic of Korea falls below these standards in several respects.

### Equality and non-discrimination obligations

Treaty ratification	Ratified	Individual complaints
ICCPR	✓	✓
ICESCR	✓	✓
ICERD	✓	✓
CEDAW	✓	✓
CRPD	✓	✗
CRC	✓	✗
CAT	✓	✓
ICMW	✗	✗
CPED	✗	✗

The Republic of Korea has accepted non-discrimination obligations through the ratification of international human rights treaties. The State is party to the International Covenant on Civil and Political Rights (ICCPR), which contains a free-standing right to non-discrimination, and prohibits discrimination in respect of all Covenant rights.<sup>2</sup>

The Republic of Korea is also a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as each of the ground-specific treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD). Individuals who have experienced age discrimination are empowered to bring complaints directly to the Human Rights Committee, CERD Committee and CEDAW Committee after exhausting domestic remedies. The Republic of Korea is not a party to any regional human rights treaty.

### The prohibition of age discrimination

Personal scope	
Has the State adopted comprehensive legislation?	✗
Has the State adopted age-specific equality legislation?	✓
Does this law create an enforceable right to non-discrimination?	✓

Despite the recommendations of UN treaty bodies, the Republic of Korea has not adopted comprehensive anti-discrimination legislation. In the absence of such legislation, protections against discrimination are fragmented across different laws and policies which vary in their **personal** and **material scope**.<sup>3</sup> The State has adopted several specific equality laws that prohibit discrimination in particular areas of life, and provide a framework for promoting equality for particular groups.<sup>4</sup>



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Notable amongst these laws is the Act on Prohibition of Age Discrimination in Employment and Employment Promotion for Older People (AEPA), which prohibits age discrimination in the area of employment.<sup>5</sup> The act is supplemented by a constitutional equality guarantee, which prohibits “discrimination in political, economic, societal or cultural life on account of sex, religion or social status”.<sup>6</sup> Whilst age is not expressly listed as a protected characteristic, the term ‘social status’ is broad in scope and could be interpreted to encompass protection on this ground.<sup>7</sup> In 2001, the Republic of Korea adopted the National Human Rights Commission of Korea (NHRCK) Act, which establishes a national human rights institution mandated to promote and protect the fundamental human rights set out in the Constitution. Age is listed as a ground of discrimination under Article 2(4) of the Act, which applies in broad areas of life, including education, employment, and the provision of goods and services.<sup>8</sup> However – as detailed further below – the commission’s enforcement powers are limited, creating barriers to justice for older people.

Personal scope	
Is multiple discrimination prohibited?	?
Is discrimination based on association prohibited?	?
Is discrimination based on perception prohibited?	?

None of the laws discussed above expressly prohibit **multiple or intersectional discrimination**, discrimination based on **association**, or discrimination based on **perception**. The **personal scope** of these laws is therefore unclear. However, the Republic of Korea has adopted specific legislation on the Rights of Persons with Disabilities, which may provide some protection to older people. In particular, Article 5 of the Anti-Discrimination against and Remedies for Persons with Disabilities Act provides that “where two or more causes of discrimination exist and a disability is deemed to be a primary basis, such acts shall be deemed discrimination”. Although age is not listed as a potential cause, multiple discrimination based on the grounds of age and disability would – in principle – be covered by this provision. However, disability must be the ‘primary’ cause of disadvantage, limiting the scope of protection. Section 6 of the Act also prohibits discrimination based on a ‘presumed’ disability. This provision offers direct protection to older people who are presumed to have an impairment for reasons relating to their age.

Prohibited conduct	
Direct discrimination	✓
Indirect discrimination	?
Harassment	?
Denial of reasonable accommodation	?

The Constitution does not define forms of prohibited conduct. Similarly, whilst the National Human Rights Commission of Korea Act clearly prohibits direct discrimination and sexual harassment,<sup>9</sup> other forms of discriminatory conduct are not listed, and it is unclear whether these forms of harm are covered.

The prohibition of age discrimination is set out under Article 4-4 of the AEPA. Under Article 4-4(1) **direct discrimination** in the areas of:

1. recruitment and employment;
  2. salary, the provision of money and valuables and other welfare benefits;
  3. education and training;
  4. placement, transfer, or promotion; and
  5. retirement or dismissal
- ... is prohibited.

Article 4-4(2) further provides that “any markedly disadvantageous result caused to a certain age group as a result of applying standards other than age without justifiable grounds is deemed age discrimination”.<sup>10</sup> This provision has been interpreted as a prohibition of **indirect discrimination**.<sup>11</sup> Article 4-9 of the AEPA prohibits **victimisation**. According to that provision, “no employer shall engage in any unfavourable treatment, such as dismissal, transfer, or disciplinary action, against a worker on the ground that the worker has filed a petition, lawsuit or report, or provided data, response or testimony regarding an act of age discrimination banned by this act”.<sup>12</sup> Violation of this provision may result in a prison sentence of up to two years, and a fine of up to 10 million KRW.<sup>13</sup> Contrary to best practice, **harassment** and **denial of reasonable accommodation** are not explicitly recognised as forms of discrimination under the AEPA, limiting the protective scope of the law. This is a notable protection gap.

Ground-based harassment and denial of reasonable accommodation are prohibited under the Anti-Discrimination against and Remedies for Persons with Disabilities Act. Some protection may, therefore, be afforded to older people through Article 5 of the law, which – as noted above – prohibits discrimination based on ‘two or more causes’.

However, this protection would only extend to older people with disabilities, and the definition of harassment differs in significant respects from that adopted by the Committee on the Rights of Persons with Disabilities.<sup>14</sup> Recent amendments also make harassment an offence under Article 76-2 of the Labour Standards Act, which is defined as “caus[ing] physical or mental suffering to (...) workers”. Again, this definition is narrower than the definition of harassment established under international human rights law. An investigation procedure is set out under Article 76-3, which also prohibits unfavourable treatment to an employee for reporting workplace harassment (victimisation). Violation of these provisions may result in criminal penalties.

Article 4-5 of the AEPA sets out a series of **exceptions** to the prohibition of age-based discrimination. Where an employer can demonstrate that “a certain age limit is (...) required in view of the nature of the relevant duties”, or where “supportive measures are taken for maintaining and promoting the employment of a certain age group” there will be no finding of discrimination. These provisions are drafted broadly, creating a risk that ageist assumptions could be used to justify differential treatment in cases concerning older people, contrary to the requirements of international law and best practice.

The AEPA sets a mandatory retirement age of 60 years or older.<sup>15</sup> If an employer sets the retirement age lower than 60 years, the retirement age will be automatically extended.<sup>16</sup> In the situation where a person has been forced to retire, but wishes to be re-employed, an employer “shall endeavour to re-employ him or her in a type of occupation that suits to his or her ability to perform the duties”. This duty is mandatory for employers of a certain size.<sup>17</sup> The act does not establish how an individual’s ‘working abilities’ should be assessed. In practice, these provisions may permit the dismissal of older workers and their reemployment in less prominent positions on lower pay. These issues are further complicated in the Republic of Korea, by the *de facto* operation of a seniority wage system, which sees older workers earning more as they reach the retirement age. Article 19-2 of the AEPA provides that an employer who extends the retirement age to 60 years or above should consider restructuring its wage system, to address this issue. However, the act does not offer guidance on how new wage levels should be set, and ‘wage-peak’ systems, introduced by some employers, may detrimentally affect the rights of older workers.<sup>18</sup>

The UN Independent Expert on the enjoyment of all human rights by older persons has called for the abolition of mandatory retirement, which is built upon ageist assumptions relating to older age.<sup>19</sup> The Organisation for Economic Co-operation and Development (OECD) has also recommended that the Republic of Korea moves to abolish the mandatory retirement system.<sup>20</sup> Measures to address the seniority wage system, as well as the practice of ‘honorary retirement’ are also needed to effect long-term institutional change.<sup>21</sup>

## Equality duties and other equality measures

Alongside eliminating discrimination, States are required to advance equality for members of discriminated groups, including older people. This, in turn, requires the adoption and effective implementation of a comprehensive package of proactive and targeted equality measures which seek to identify and address structural barriers to equal participation. To meet their non-discrimination and equality obligations under international law, many states have enacted equality duties that require public authorities and other duty-bearers such as employers and educators to assess the impact of their policies and mainstream the rights of discriminated groups in their work.

**Positive action** is permitted, but not expressly mandated under national legislation. The National Human Rights Commission of Korea (NHRCK) Act makes clear that targeted measures designed to address inequality will not constitute discrimination.<sup>22</sup> To be legitimate, such measures must be ‘temporary’, consistent with best practice. Article 4-5(4) of the AEPA provides that “supportive measures (...) taken for maintaining and promoting the employment of a certain age group” shall not be deemed discrimination.<sup>23</sup> This provision may also be read as permitting positive action. Unlike the NHRCK Act, however, Article 4-5(4) is unqualified, and it is unclear how much discretion is afforded to employers to design and implement measures pursuant to this provision. There is a risk, therefore, that policies based on ageist and paternalistic assumptions may be adopted with the aim of protecting older people. Certain measures, including the development of vocational and skills-development training programmes, are clearly permitted.<sup>24</sup> Some specific measures relating to the employment of older people are set out under the AEPA, but the discussion of these measures is beyond the scope of this study.<sup>25</sup>

Article 3 of the AEPA requires government to adopt a range of measures to eliminate discrimination and advance equality for older people in the area of employment. This includes a discrete duty to develop relevant **policies** on the employment of older people.

This duty is set out in more detail under Article 4-3 of the act, which requires the Minister of Employment and Labour to formulate “a basic plan (...) every five years in consultation with the head of a relevant central agency”. The plan should include, *inter alia*, an overview of the current situation of older people, discussion of established schemes and policies, and an assessment of previous work conducted in this area.<sup>26</sup> Once formulated, the plan must be submitted to the employment policy deliberative council, as well as the National Assembly, “without delay”.<sup>27</sup>

There is no general legal obligation to conduct **equality impact assessment** in the Republic of Korea. However, the State and local governments are required under Article 15 of the Framework Gender Equality Act to conduct gender impact assessment. The act also contains discrete gender-mainstreaming duties, which require the consideration of gender equality in budgeting processes, and the collection of statistics.<sup>28</sup> Whilst progressive, these duties do not apply to other grounds of discrimination, such as age, limiting their application to older people, and older women.

## Enforcement and implementation

To ensure access to justice for victims of discrimination, a wide range of measures are required. This includes the establishment and adequate resourcing of institutions empowered to enforce the legal framework; the amelioration of national rules governing evidence and proof in discrimination cases; and the provision of legal aid and assistance, alongside procedural accommodation and accessibility measures, to remove financial and physical justice barriers. While States may adopt slightly different approaches to the enforcement and implementation of equality law, in all cases people who have been subjected to discrimination must be ensured the right to seek legal redress and an effective remedy.

Where an individual has experienced age discrimination, they may submit a complaint to the National Human Rights Commission.<sup>29</sup> The commission will investigate the complaint, and if they find that discrimination has occurred, they will make a recommendation for actions to remedy the harm. These recommendations are non-binding, creating barriers to effective enforcement in certain areas of life, such as the provision of goods and services. To address this gap, the AEPA contains additional enforcement provisions, which apply in the area of employment. In the event of non-compliance with a recommendation of the commission, the Ministry of Employment and Labour may, within three months of accepting an application, issue a corrective order, requiring an employer to refrain from discrimination, prevent recurrence, provide restitution and other such measures required to rectify the discrimination.<sup>30</sup>

The employer is required to report against this order, and in the event of further non-compliance, may be fined up to 30 million KRW.<sup>31</sup> A fine of up to 5 million KRW may be issued for discrimination against workers in respect of recruitment or employment in violation of Article 4-4.<sup>32</sup>

Neither the AEPA nor the NHRCK Act contain provisions regulating the transfer of the **burden of proof** in cases where the right to non-discrimination is violated. However, investigation into a complaint of discrimination is carried out by the National Human Rights Commission, which possesses broad investigatory powers, and may require the submission of evidence.<sup>33</sup> Obstruction of the work of the commissioner or their staff ‘by any deceit’ is punishable by imprisonment and a fine of not more than 30 million KRW.<sup>34</sup> In respect of the criminal penalty provisions of the AEPA, a shift in the burden of proof would be inappropriate, and possibly conflict with the assumption of innocence, and the right to a fair trial.

## Gaps and opportunities

In the absence of comprehensive anti-discrimination legislation, legal protections against age discrimination are fragmented, and confined mainly to the area of employment. Whilst the AEPA contains a number of legal guarantees, there are some gaps in protection – most notably, the failure to identify and distinguish different forms of prohibited conduct. Exceptions to the general prohibition of discrimination are expansive and are not subject to appropriate qualifications (such as the requirements of proportionality and necessity) required by international law. In areas such as mandatory retirement, the law reflects a paternalistic approach to older people’s rights.

Outside of the area of employment, protections for older people are limited, and where non-discrimination provisions are included in national laws, there are (with some exceptions) an absence of enforcement mechanisms. The OECD has noted that in practice ‘few cases’ of age discrimination are brought in the Republic of Korea.<sup>35</sup> According to data from the National Human Rights Commission “1,498 cases of age discrimination were brought forward between 2001 and 2014. Of these, 76% were employment-related – most of them related to recruitment and hiring”.<sup>36</sup> This equates to “around 100–150 cases (...) every year” with only around 11.2% of cases accepted and the rest rejected or dismissed.<sup>37</sup> The total proportion of age-discrimination complaints dropped from around 7% of all claims in 2014, to around 3.6% of all claims in 2017.<sup>38</sup> In the same year, 111 age-related claims were filed.<sup>39</sup>



Whilst the Republic of Korea has yet to enact comprehensive anti-discrimination legislation, several draft laws have been submitted to Parliament, including – most recently – on 9 August 2021.<sup>40</sup> During the most recent (3rd) cycle of the Universal Periodic review, the State accepted multiple recommendations for the adoption of a comprehensive anti-discrimination law and momentum appears to be pushing in the direction of adoption.<sup>41</sup> However, the law remains to be enacted,

limiting protections for older people, who are forced to rely upon fragmented legal provisions, restricted to particular areas of life, and frequently lacking enforcement mechanisms, to assert their right to equality and non-discrimination. UN treaty bodies, as well as international human rights organisations, such as Human Rights Watch, have urged the Republic of Korea to adopt a comprehensive law which offers the clearest and most potent opportunity to advance equality for older people within the State.<sup>42</sup>

## Endnotes

1. For a discussion of the human rights framework on age discrimination see HelpAge International, *Advancing equality for older people*, 2022, available at: [www.helpage.org/AgeEquality](http://www.helpage.org/AgeEquality)

2. International Covenant on Civil and Political Rights, Articles 26 and 2(1).

3. See further, Republic of Korea, Common Core Document, UN Doc. HRI/CORE/KOR/2016, 2016, para. 68.

4. See, in particular, the Anti-Discrimination against and Remedies for Persons with Disabilities Act, and the Framework Act on Gender Equality. These laws are supplemented by other ground-specific laws and policies.

5. Act on Prohibition of Age Discrimination in Employment and Employment Promotion for Older People, Article 4-4.

6. Constitution of the Republic of Korea, Article 11.

7. In 2018 amendments to the Constitution were proposed, which would add age to the list of explicitly protected grounds. However, at the time of writing, these amendments have not been passed. Jongcheol Kim, 'Presidential Proposal for Constitutional Revision in South Korea: Unlikely to be Passed but Significant Step Forward', *Constitution Net*, 16 May 2018, available at: <https://constitutionnet.org/news/presidential-proposal-constitutional-revision-south-korea-unlikely-to-be-passed-significant-step>

8. National Human Rights Commission of Korea Act, Article 2(4).

9. National Human Rights Commission of Korea Act, Articles 2(4) and 2(5).

10. AEPA, Article 4-4(2).

11. Chung Soon-dool, Lee Miwoo, 'Age Discrimination in Employment Act' in Korea, US, and Netherlands: Its Concepts and Target Groups', 2012.

12. AEPA, Article 4-9.

13. *Ibid.*, Article 23-3.

14. See Anti-Discrimination against and Remedies for Persons with Disabilities Act, Articles 3(21) and 32, and 4(1)(3) and 4(2), respectively. See also Committee on the Rights of Persons with Disabilities, General Comment No. 6, UN Doc. CRPD/C/GC/6, 2018, paras 18(c) and (d).

15. AEPA, Article 19(1).

16. *Ibid.*, Article 19(2).

17. *Ibid.*, Article 21.

18. See further, Age Discrimination Info, South Korea, 2018, available at: [www.agediscrimination.info/international-age-discrimination/south-korea](http://www.agediscrimination.info/international-age-discrimination/south-korea)

19. Report of the Independent Expert on the enjoyment of all human rights by older persons, UN Doc. A/HRC/48/53, 2021, paras. 65 and 81.

20. OECD, Ageing and Employment Policies, Working Better with Age: Korea, [www.oecd-ilibrary.org/sites/9789264208261-8-en/index.html?itemId=/content/component/9789264208261-8-en](http://www.oecd-ilibrary.org/sites/9789264208261-8-en/index.html?itemId=/content/component/9789264208261-8-en)

21. *Ibid.*

22. National Human Rights Commission of Korea Act, Article 2.

23. AEPA, Article 4-5(4).

24. *Ibid.*, Article 4.

25. See, in particular, AEPA, Articles 12-16. See also, broadly, the Welfare of Senior Citizens Act.

26. *Ibid.*, Article 4-3(2).

27. *Ibid.*, Articles 4-4(3) and (4). See also, broadly, the Welfare of Senior Citizens Act.

28. Framework Gender Equality Act, Articles 16-17.

29. AEPA, Article 4-6(1); NHRCK Act, Article 30(1).

30. AEPA, Articles 4-7(3), 5-7(1), and Article 4-7(2).

31. *Ibid.*, Article 24(1).

32. *Ibid.*, Article 23-3(2).

33. National Human Rights Commission of Korea Act, Article 36.

34. *Ibid.*, Article 56(3)

35. OECD, Ageing and Employment Policies, Working Better with Age: Korea, [www.oecd-ilibrary.org/sites/9789264208261-8-en/index.html?itemId=/content/component/9789264208261-8-en](http://www.oecd-ilibrary.org/sites/9789264208261-8-en/index.html?itemId=/content/component/9789264208261-8-en)

36. *Ibid.*

37. *Ibid.*

38. Age Discrimination Info, South Korea, 2018, available at: [www.agediscrimination.info/international-age-discrimination/south-korea](http://www.agediscrimination.info/international-age-discrimination/south-korea)

39. *Ibid.*

40. See Amnesty International, 'South Korea: Lawmakers must Seize Chance to Pass Landmark Anti-Discrimination Act', 11 August 2021, available at: [www.amnesty.org/en/latest/news/2021/08/south-korea-lawmakers-must-pass-landmark-anti-discrimination-act/](http://www.amnesty.org/en/latest/news/2021/08/south-korea-lawmakers-must-pass-landmark-anti-discrimination-act/)

41. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea (Annex), UN Doc. A/HRC/37/11/Add.1, 2018, para. 15.

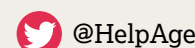
42. Human Rights Committee, Concluding Observations: Republic of Korea, UN Doc. CCPR/C/KOR/CO/4, 2015, para. 13; Committee on Economic, Social and Cultural Rights, Concluding Observations: Republic of Korea, UN Doc. E/C.12/KOR/CO/4, 2017, para. 23; Committee on the Elimination of Discrimination against Women, Concluding Observations: Republic of Korea, UN Doc. CEDAW/C/KOR/CO/8, 2018, para. 13; Committee on the Elimination of Racial Discrimination, Concluding Observations: Republic of Korea, UN Doc. CERD/C/KOR/CO/15-16, 2012, para. 7; Human Rights Watch, 'Time Running Out for South Korea to End Age Discrimination', 19 November 2021.

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