

The Philippines

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.¹ 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 Philippines 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 Philippines 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.²

The Philippines 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 and CEDAW Committee after exhausting domestic remedies. The Philippines 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 Philippines has not adopted a comprehensive anti-discrimination law. In the absence of such legislation, protections against discrimination are fragmented across different laws and policies which vary in their **personal** and **material** scope. 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.³



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Notable amongst these laws is the Anti-Age Discrimination in Employment Law, which prohibits age discrimination in the area of employment. This Act is supplemented by specific laws relating to older people,⁴ as well as singular anti-discrimination provisions in different legal fields that apply on the basis of age and other grounds.⁵ The Philippines Constitution does not expressly prohibit discrimination, although Section 1 of the Bill of Rights declares that no person shall “be denied the equal protection of the laws”, and Section 11 of Article 2 notes the responsibility of the State to ensure full respect for human rights. The Constitution also establishes some specific rights guarantees for older people.⁶ However, these provisions do not give rise to an individual cause of action and are therefore of limited effect.

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

The Anti-Age Discrimination in Employment Law does not expressly prohibit **multiple** or **intersectional discrimination**, discrimination based on **association**, or discrimination based on **perception**. The **personal scope** of the law is therefore unclear. However, the Philippines has adopted specific legislation on the rights of women and persons with disabilities, which may provide some protection to older persons. Under Section 4(b) of the Magna Carta of Women, discrimination against women is defined to include “discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion”. The law also contains a specific provision, which sets out the responsibility of the State to protect older women from forms of gender discrimination.⁷ The Magna Carta for Disabled Persons does not expressly protect against intersectional discrimination. However, the definition of ‘disability’ includes persons “regarded as having (...) an impairment”.⁸ Section 36(d) also prohibits discrimination in the provision of goods and services to a person due to their association or relationship with a person with disabilities. Together, these provisions offer direct protection to older people who are presumed to have an impairment for reasons relating to their age, or on the basis of their association with a protected person (for example, when refused access to a service while providing care for a child with disabilities).

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

The Anti-Age Discrimination in Employment Law does not define forms of prohibited conduct. **Direct discrimination** in job adverts, appointment, terms and conditions of service, training opportunities, promotion and termination, is clearly prohibited.⁹ However, other forms of discriminatory conduct, such as **indirect discrimination, harassment, or denial of reasonable accommodation**, are not listed. At the time of writing, there have been no Supreme Court judgments relating to the interpretation of the law, and it is therefore unclear whether any of these forms of harm are covered.

The Magna Carta of Women provides protection against both direct and indirect forms of gender discrimination affecting older women.¹⁰ These forms of discrimination are also prohibited under the Magna Carta for Disabled Persons, which additionally requires that reasonable accommodations are provided to persons with disabilities in specific areas of life. However, as noted, there is no express prohibition of intersectional discrimination under the Act, and protections to older people are, therefore, limited. Moreover, the denial of reasonable accommodation (in the form of modifications) is only recognised as a form of discrimination in the provision of goods and services.¹¹ The Committee on the Rights of Persons with Disabilities has criticised the law in this regard.¹² Amendments to the Magna Carta in 2006 added the new offence of ‘public ridicule’, which may offer some protection against harassment to persons with disabilities. However, this offence is broadly defined, and differs from the definition of harassment adopted by the CRPD Committee.¹³ Moreover, it does not expressly protect older people. Some accommodating measures for older people are required under separate legislation.¹⁴ However, there is no broad requirement to provide reasonable accommodation to older people in the Philippines.

Section 6 of the Anti-Age Discrimination in Employment Law establishes a series of **exceptions** to the prohibition of age discrimination. Where an employer can demonstrate that “age is a bona fide occupational qualification reasonably necessary in the normal operation of a particular business or where [a] differentiation is based on reasonable factors other than age”, there will be no finding of discrimination. Regulations adopted by the Department of Labor and Employment (DOLE) in 2017 require employers relying on an exception established under Section 6 of the Law to “submit a report prior to its implementation to the DOLE regional office which has jurisdiction over the workplace”. Non-compliance with this requirement, “shall give rise to the presumption that the employer is not allowed to set [the adopted] age limitation”.

Conversely, compliance with the obligation will give rise to a presumption that the age-based distinction is lawful. The regulations do not specify how this presumption may be rebutted, and in practice the notification system may operate as a substitution for assessment of the legitimacy of measures, thereby permitting age discrimination against older people. These exceptions are drafted extremely broadly and there is a real 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.

Other **justifications** for age-based distinctions allowed under Section 6 include an intention to “observe the terms of a bona fide seniority [wage] system” or “a bona fide employee retirement or a voluntary early retirement plan”. The Labour Code establishes a compulsory retirement age of 65 years old. An earlier retirement age may also be established by a collective bargaining agreement or contract of employment.¹⁵ 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.¹⁶

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.

Unlike the Magna Carta on Persons with Disabilities and the Magna Carta of Women, the Anti-Age Discrimination in Employment Law does not require, or expressly permit, the adoption of **positive action** measures. Some specific positive action measures for older people are set out in other laws and policies.¹⁷ However, the discussion of these laws falls beyond the scope of this present study.

Section 2 of the Anti-Age Discrimination in Employment Law notes the general policy of the state to promote equality in employment without discrimination on the basis of age. Specific obligations are imposed on the Department of Labor and Employment under Section 8 of the law to conduct studies on the employment of older people and to promote programmes aimed at enhancing “the knowledge and skills of every individual regardless of age”. However, the law does not impose a direct obligation on government or other (private) duty-bearers to adopt **equality policies and strategies** for older people. This stands in contrast to other legislation, such as the Magna Carta of Women, which contains discrete gender-mainstreaming obligations.¹⁸ As discussed further below, in 2019, the Philippines passed the National Commission of Senior Citizens Act. The act establishes an independent body charged, *inter alia*, with “formulating policies for the promotion and protection of the rights and well-being of senior citizens”. However, as this body has only recently been established, the results of its work have yet to be seen. Previous action plans adopted by the State on older people are now several years out of date.¹⁹

There is no general legal obligation to conduct **equality impact assessment** in the Philippines.

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.

Different mechanisms have been established for the enforcement of equality law in the Philippines. Avenues of enforcement, as well as available remedies, differ by grounds and area of life. Generally, as noted by the CRPD Committee in respect of persons with disabilities, there is a lack of effective complaints and redress mechanisms.²⁰ This is true for older people, despite some positive recent developments.

Violations of the Anti-Age Discrimination in Employment Law are punishable by criminal sanctions.²¹ There are no civil sanctions established for a violation of the law. This approach runs contrary to best practice.

International law requires a shift in the **burden of proof** in discrimination cases once a prima facie case of discrimination has been established. This is an important procedural guarantee: a person, public body or private entity alleged to have discriminated against a claimant is often more powerful, both in terms of resources and access to information. For example, proving that dismissal was discriminatory will require access to documentation held by the employer and for the employer to justify its decision. Without a shift in the burden of proof, the employee will unlikely have access to the evidence necessary to proceed, undermining access to justice. However, a shift in the burden of proof would be inappropriate in criminal cases as it would conflict with the presumption of innocence. No specific complaints mechanisms are established under the law, although the DOLE is granted the authority to “investigate and require the keeping of records necessary for the administration of [the] act”.

The Commission on Human Rights (CHR) is established as the national human rights institution of the Philippines. Its functions are set out under Article 13, Section 18 of the Constitution, and include broad responsibilities to protect and promote human rights.

The Commission has no inherent enforcement powers,²² although it may investigate alleged human rights violations, issue (non-binding) recommendations, initiate litigation, and refer cases to other enforcement bodies established under national law. The commission has also been designated the Gender Ombud, under the Magna Carta of Women. In this role, the commission has the power to investigate complaints of discrimination affecting older women, refer them to a relevant body and recommend the imposition of appropriate sanctions.²³

In 2019, the National Commission of Senior Citizens was established as a specific **equality body** for older people. In addition to its policy development function, described above, the commission is made responsible for the “full implementation of laws, policies, and programs of the government pertaining to senior citizens”.²⁴ The Implementing Rules and Regulations to the Act expand upon the commission’s responsibilities. Under Rule 5, the commission is empowered to “act on the complaints of senior citizens by conducting investigations, case build-up, and if possible, recommend the filing of administrative, civil or criminal complaints against any individual, establishment, business entity, institution or agency”, to a relevant body or bodies. To enforce relevant laws and policies relating to older people, the regulations provide that the Commission “may issue compliance orders”.²⁵ This is a welcome development, although it is unclear whether such orders are legally binding, and due to the recent adoption of the implementing regulations, there has been little significant practice to date.

Gaps and opportunities

In the absence of comprehensive anti-discrimination legislation, legal protection against discrimination in the Philippines is fragmented across different provisions which vary in their personal and material scope. In respect to older people, the Anti-Age Discrimination in Employment Law creates an enforceable right to non-discrimination, although there are critical gaps in its protection. Amongst other issues, the personal scope of the law is limited; exceptions established under the law are extremely broadly drafted and create a risk of arbitrary application on the basis of ageist assumptions; and the absence of civil remedies impedes access to justice. Provisions establishing a compulsory retirement age reflect a paternalistic approach to older age. Outside of the area of employment, singular non-discrimination provisions provide patchy protection to older people. Where protections do exist, it is noted that there is a lack of effective complaints and redress mechanisms. The establishment in 2019 of the National Commission of Senior Citizens as a specific equality body for older people is a welcome development, although the scope of its enforcement powers remains to be seen.

While the Philippines has yet to adopt comprehensive anti-discrimination legislation, there is a real prospect of legal reform: several draft laws have been submitted to the Parliament which are undergoing a process of harmonisation. The draft legislation has received the support of the President as well as that of several legislative committees. Civil society has played a critical role in helping to increase the legislative appeal

of equality law reform through the adoption of a collaborative and comprehensive approach, which has included groups working with and on behalf of older people.²⁶ If the State is to fully discharge its equality and non-discrimination obligations, it must ensure the adoption of comprehensive equality legislation in line with best practice standards.

Endnotes

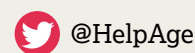
1. For a discussion of the human rights framework on age discrimination see HelpAge International, *Advancing equality for older people, 2022*, available at: www.helpage.org/AgeEquality
2. International Covenant on Civil and Political Rights, Articles 26 and 2(1).
3. See, in particular, the Magna Carta of Women, and the Magna Carta for Disabled Persons.
4. For example, the Senior Citizens Center Act of the Philippines; the Expanded Senior Citizens Act of 2010; An Act Providing for the Mandatory Health Coverage for all Senior Citizens; and an Act Authorizing the Commission On Elections To Establish Precincts Assigned To Accessible Polling Places Exclusively For Persons With Disabilities And Senior Citizens.
5. For example, the Mental Health Act provides that individuals with “any lived experience of any mental health condition” should be able to exercise their rights without discrimination *inter alia* on the basis of age. The Labour Code of the Philippines contains specific provisions prohibiting gender-based discrimination, and age discrimination against children. See Mental Health Act; Labour Code, Articles 133 and 138.
6. Constitution of the Republic of the Philippines, Article XIII, Section 11, and Article XV, Section 4.
7. Magna Carta of Women, Section 33.
8. Magna Carta for Persons with Disabilities, Section 4(c).
9. Anti-Age Discrimination in Employment Law, Section 5.
10. Magna Carta of Women, Section 4(b).
11. Section 36(e)(2). In the area of employment, an employer cannot dismiss a person with disabilities without having first sought to make reasonable accommodations (Section 32(g)). However, the Magna Carta does not establish an independent right to reasonable accommodation in this area.
12. See Committee on the Rights of Persons with Disabilities, Concluding Observations: The Philippines, UN Doc. CRPD/C/PHL/CO/1, 2018, paras 10–11.
13. See Committee on the Rights of Persons with Disabilities, General Comment No. 6, UN Doc. CRPD/C/GC/6, 2018, paras 18(c) and (d).
14. In respect of political participation, for example, see the Act Authorizing the Commission on Elections to Establish Precincts Assigned to Accessible Polling Places Exclusively for Persons with Disabilities and Senior Citizens, Section 10.
15. Labour Code, Article 302.
16. 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.
17. See, in particular, the Expanded Senior Citizens Act of 2010. National court practice has established that some measures targeted at older people are permissible. In *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*, the Supreme Court of the Philippines upheld the Constitutionality of provisions of the Expanded Senior Citizens Act of 2003, which granted a 20% discount to older people in the area of taxation.
18. Magna Carta of Women, Section 36.
19. See, in particular, the Philippine Plan of Action for Older Person (PPAOP) for 1999–2004; the Philippine Plan of Action for the Senior Citizens (PPASC) for 2006–2010 and the Philippine Plan of Action for Senior Citizens (2011–2016).
20. Committee on the Rights of Persons with Disabilities, Concluding Observations: The Philippines, UN Doc. CRPD/C/PHL/CO/1, 2018, paras. 10–11.
21. These may include a fine of between 50,000 and 500,000 pesos, and imprisonment of between three months and two years. See Anti-Age Discrimination in Employment Law, Section 7.
22. Supreme Court of the Philippines, *EPZA v. CHRP*, G.R. No. 101476, 1992.
23. Magna Carta of Women, Section 41. Remedies and referral pathways are discussed in more detail in the Commission’s 2016 guidelines, which are available at: <http://chr.gov.ph/wp-content/uploads/2018/09/CHR-Gender-Ombud-Guidelines.pdf>
24. National Commission of Senior Citizens Act, Section 7(c).
25. Implementing Rules and Regulations of Republic Act No. 11350, 2021, available at: <https://mirror.officialgazette.gov.ph/2021/09/27/implementing-rules-and-regulations-of-republic-act-no-11350-otherwise-known-as-the-national-commission-of-senior-citizens-act/>
26. Equal Rights Trust, *Together for Equality: Why and how a comprehensive approach to challenging discrimination works*, 2021, available at: <https://www.equalrightstrust.org/news/equal-rights-trust-launches-new-study-together-equality>

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