

# Tanzania

## 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.

The Tanzanian legislative framework does not meet these standards.<sup>2</sup>

### Equality and non-discrimination obligations

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

Tanzania 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>3</sup>

Tanzania 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 CEDAW Committee and the CRPD Committee after exhausting domestic remedies. The State is also party to relevant regional human rights instruments, including the African Charter on Human and Peoples' Rights which prohibits discrimination on an open-ended list of grounds.<sup>4</sup> However, Tanzania has not ratified the Protocol to the Charter on the Rights of Older Persons in Africa, which is yet to come into force.

### The prohibition of age discrimination

Personal scope	
Has the State adopted comprehensive legislation?	✗
Has the State adopted age-specific equality legislation?	✗
Does the law expressly prohibit age discrimination?	✓

Tanzania has not adopted comprehensive anti-discrimination legislation or specific legislation governing the rights of older persons. In the absence of such legislation, protections against age discrimination are patchwork. The main protection against discrimination stems from the Constitution. Article 12(1) declares all human beings free and equal, whilst Article 13(1) declares all persons "equal before the law" and "entitled, without any discrimination, to protection and equality before the law".



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Under Article 13(2) “no law enacted by any authority (...) shall make any provision that is discriminatory either of itself or in its effect”. Furthermore, “no person shall be discriminated against by any person or any authority acting under any law in the discharge of the functions or business of any state office”.<sup>5</sup> The term ‘discriminate’ is defined under Article 13(5) to include differential treatment occurring on the basis of a person’s “nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life”. This list does not expressly include age, however, the term ‘station in life’ is broad in scope and would conceivably encompass discrimination on this ground. Outside of this constitutional protection, Tanzanian law contains singular anti-discrimination provisions, which apply in particular legal fields and vary in both their **personal** and **material scope**. The main piece of legislation is the Employment and Labour Relations Act. Discrimination on the basis of age is expressly prohibited under Section 7 of the act, which also establishes particular equality obligations for employers.

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

The Constitution does not expressly define the term ‘discrimination’ to include forms of **multiple or intersectional discrimination**, or discrimination on the basis of **association** or **perception**. The extent to which these concepts are recognised is therefore unclear. The same is true of the Employment and Labour Relations Act, with one exception: the harassment of an employee under Section 7(5) of the Act is prohibited on the basis of “any one, or combination of grounds”. Different wording is used under Section 7(4), and it is therefore unclear whether the prohibition of intersectional age discrimination in employment applies to other forms of discrimination.

Tanzania has adopted specific legislation on the Rights of Persons with Disabilities. This act provides that the government shall “prohibit all forms of discrimination on the basis of disability and guarantee [to] persons with disabilities equal and effective legal protection against discrimination on all grounds”.<sup>6</sup> Section 6(c) of the Act further requires the government to “take appropriate measures” to advance equality for persons with disabilities and “to ensure that reasonable changes are provided to persons with disabilities of all ages and gender”. On this basis, the act appears to provide some protection against intersectional discrimination arising on the basis of age and disability. However, this is not explicit, and no national judicial practice could be found to support this interpretation.

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

The ban on discrimination clearly encompasses **direct discrimination**. However, other forms of prohibited conduct are not clearly defined under national law, and the extent to which they are prohibited is unclear. This is a notable protection gap. Article 13(2) of the Constitution provides that no law shall discriminate in its “purpose or effect”. This phrase is sometimes interpreted to cover laws, policies and practices that have an **indirectly discriminatory** effect, although the concepts are not identical, and the CEDAW Committee has criticised Tanzania for failing to explicitly prohibit indirect gender discrimination under its Constitution.<sup>7</sup> Indirect age discrimination is expressly prohibited under Section 7(4) of the Employment and Labour Relations Act.<sup>8</sup>

**Harassment** of an employee is also listed as a form of discrimination, although the term ‘harassment’ is not defined.<sup>9</sup> Section 29(3) of the Employment and Labour Relations Code of Good Practice specifies that harassment may include acts “of a sexual nature or otherwise”, indicating that both sexual harassment and ground-based harassment are covered. **Denial of reasonable accommodation** is identified as a form of disability discrimination under the Act on the Rights of Persons with Disabilities. As noted above, this act requires the government “to ensure that reasonable changes are provided to persons with disabilities of all ages”.<sup>10</sup> However, there is no general duty to accommodate older people, and the concept is not included in national employment law.

On **justifications** and **exceptions**, Section 7(6)(b) of the Employment and Labour Relations Act specifies that it shall not be discrimination “to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job”. According to Section 30(5) of the Employment and Labour Relations Code of Good Practice, selection criteria and conditions of employment should be audited by an employer “to ensure they strictly relate” to inherent job requirements.<sup>11</sup> With regard to training, performance evaluation, and promotions and transfers, employers are required to ensure that “opportunities are determined objectively without discriminating against any groups or classes of employees”.<sup>12</sup> These requirements are necessary to ensure that measures adopted are proportionate to their aim and do not rely on ageist assumptions.

## 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.

Under national legislation, **positive action** measures are permitted but not mandated. Article 13(5) of the Constitution provides that “the word ‘discrimination’ shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society”. This provision could be read as permitting positive action, although its application beyond the ground of disability is unclear. The Constitution does not establish any conditions for the operation of this provision, creating a risk that (if applied to age) it could be used to justify the adoption of discriminatory measures based on paternalistic assumptions relating to older age. Positive action is permitted under Section 6(a) of the Employment and Labour Relations Act, provided that such measures are “consistent with the promotion of equality or the elimination of discrimination in the workplace”. This provision is expanded upon in the Employment and Labour Relations Code of Good Practice, which allows “preference in selection [to] be given to suitably qualified candidates from previously disadvantaged groups”.<sup>13</sup> Specific measures adopted by the State for older people falls outside of the scope of the present study.

Despite the adoption of a national ageing policy in 2003, there is no generally applicable legal obligation for duty-bearers to develop (age) **equality policies and strategies**. However, the Employment and Labour Relations Act does impose discrete equality obligations on employers. Under Section 7(1) of the Act, “every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice”. As part of this duty, employers are required to develop and register “a plan to promote equal opportunity and to eliminate discrimination in the workplace” with the Labour Commissioner.<sup>14</sup> The commissioner may require an employer to produce such a plan and ensure its registration.<sup>15</sup> There are no specific remedies provided for breach of this duty under the law. However, Section 7(8)(c) of the Act provides that a Labour Court or arbitrator shall consider “any plan registered with the Labour Commissioner under this section”. This part of the act relates to the burden of proof (discussed further below). It appears, therefore, that non-compliance with an employers’ preventative equality planning obligations may help to evidence or support a claim of discrimination.

The term ‘employment policy or practice’ is defined under Section 7(9)(c) of the Act to include “any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures”. Further guidance on employers’ equality planning duty is set out in Part III of the Employment and Labour Relations Code of Good Practice. As part of this code, employers should establish a committee to oversee the implementation of the equality plan, promote it amongst employees, and ensure compliance with its requirements, including through making recommendations for change.<sup>16</sup> However, the duty to ensure equal opportunity belongs primarily to the employer, who must “adopt, communicate, implement, monitor and periodically review policies to eliminate discrimination”.<sup>17</sup>

There is no general legal obligation to conduct **equality impact assessment** under national legislation.

## 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 experienced discrimination must be ensured the right to seek legal redress and an effective remedy.

A person whose constitutional rights to equality and non-discrimination have been violated or are “likely to be violated by any person anywhere in the United Republic” of Tanzania may apply to the High Court seeking redress.<sup>18</sup> The court is empowered “to make all such orders as shall be necessary and appropriate to secure the applicant the enjoyment of the basic rights, freedoms and duties” established under the Constitution.<sup>19</sup> Bills that have not yet been adopted may not be challenged.<sup>20</sup>

Part VIII of the Employment and Labour Relations Act governs dispute resolution. Where an employee has experienced discrimination, they are empowered to submit a complaint to the Commission for Mediation and Arbitration (the CMA). If the dispute is not resolved, the case can proceed to arbitration, or adjudication by the Labour Court. In cases concerning dismissal, the arbitrator or Labour Court has powers to make an order for compensation equivalent to at least twelve months pay, or order an employee’s reinstatement, with full pay for the period of the termination.<sup>21</sup> Section 102 of the act provides that a “District Court and a Resident Magistrate’s Court have jurisdiction to impose a penalty for an offence

under this act". Violations of the right to non-discrimination may result in a fine of up to five million shillings.

Chapter IV, Part 1 of the Evidence Act provides that the burden of proving facts in an ordinary civil case falls on the party making the claim, except where an exception is established by law. Consistent with best practice, once a *prima facie* case of age discrimination has been established in employment proceedings, the **burden of proof** shifts to the employer, who must demonstrate that their action was not discriminatory, or fell within an exception to the general prohibition of discrimination.<sup>22</sup> However, no specific rules relating to the burden of proof are established under Article 13 of the Constitution. In such cases, it may therefore be assumed that the burden of proof lies on the party alleging that discrimination has occurred. This may result in a denial of justice in individual cases.

Tanzania has not established a specialised **equality body**, although a national human rights institution (NHRI) – the Commission for Human Rights and Good Governance – is established under the Constitution. The commission has been awarded an 'A' status as an NHRI by the United Nations. Its powers are set out under national legislation and include broad promotion and protection responsibilities.<sup>23</sup> The commission is also empowered to receive and investigate complaints of human rights violations (which may include violations of the rights to equality and non-discrimination) upon its own motion or following a complaint by an individual or interested third party.<sup>24</sup> In exercising this function, the commission possesses broad investigatory powers and may compel the production of documents.<sup>25</sup> After investigating, the commission may issue relevant

recommendations and, in the event of non-compliance, may institute legal proceedings to seek a remedy.

## Gaps and opportunities

Tanzania has not enacted comprehensive anti-discrimination legislation or age-specific equality legislation. In the Tanzanian legal framework, the main protections against discrimination are included in employment law. In this area, a number of positive practices should be highlighted. The Employment and Labour Relations Act expressly prohibits discrimination on the basis of age; explicitly recognises different forms of discrimination (including indirect age discrimination and ground-based harassment); and includes a provision relating to the transfer of the burden of proof in compliance with international standards. The act is expanded upon in guidance documents which bring it more closely in alignment with best practice, including in the area of equality duties, where the guidance establishes a specific legal obligation for employers to adopt equality policies.

Outside of the area of employment, protections against discrimination are patchwork. There is a constitutional equality guarantee, which is limited in its personal scope, and several singular anti-discrimination provisions, which vary in both their personal and material scope. With the exception of the Employment and Labour Relations Act, national legislation does not adequately define different forms of discrimination, nor does it provide an effective framework for advancing equality for older people. To address these gaps in protection, and to ensure full and effective protection against discrimination on the basis of age and other characteristics, Tanzania must adopt comprehensive anti-discrimination legislation.

### Endnotes

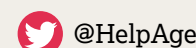
1. For a discussion of the human rights framework on age discrimination see HelpAge International, *Advancing equality for older people*, 2022, available at: [www.helpage.org/AgeEquality](http://www.helpage.org/AgeEquality)
2. The United Republic of Tanzania consists of a union between the Tanzanian mainland and Tanzania Zanzibar. In some areas, different laws and policies apply between these jurisdictions. References to Tanzania within this note, should therefore be interpreted as references to mainland Tanzania.
3. International Covenant on Civil and Political Rights, Articles 26 and 2(1).
4. The Court has interpreted this provision to include protection against age discrimination. See further, note 1.
5. Constitution of the United Republic of Tanzania, Article 13(4).
6. Act on the Rights of Persons with Disabilities, Section 6(b).
7. See for example, Committee on the Elimination of Discrimination against Women, Concluding Observations on Tanzania, UN Doc. CEDAW/C/TZA/CO/7-8, 2016, paras. 8–9.
8. A definition of the terms 'direct discrimination' and 'indirect discrimination' is included under Section 31 of the Employment and Labour Relations Code of Good Practice.
9. Employment and Labour Relations Act, Section 7(5).
10. Act on the Rights of Persons with Disabilities, Section 6(c).
11. See also, Section 35 of the Code.
12. Employment and Labour Relations Code of Good Practice, Section 30(5)(e).
13. *Ibid.*, Section 3(5)(b).
14. Employment and Labour Relations Act, Section 7(2).
15. *Ibid.*, Section 7(3).
16. Employment and Labour Relations Code of Good Practice, Section 30(8).
17. *Ibid.*, Section 32.
18. See Constitution of the Republic of Tanzania, Article 30(3).
19. The Basic Rights and Duties Enforcement Act, Section 13(1).
20. *Ibid.*, Section 8(3).
21. Employment and Labour Relations Act, Section 40(1).
22. *Ibid.*, Section 7(8).
23. Commission for Human Rights and Good Governance Act, Section 6(1).
24. *Ibid.*, Section 15(1).
25. *Ibid.*, Section 25.

The report was developed with generous funding by AARP.



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