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**HelpAge International submission for the consultation on ageism and age discrimination by the Independent Expert on the enjoyment of all human rights by older persons**

**March 2021**

**1. Forms and manifestations of ageism and age-discrimination**

**1.1 How older people define ageism**

HelpAge conducted a qualitative research project focused on older people’s experiences of ageism and ageing in 2020.[[1]](#footnote-1) In Costa Rica focus group participants defined ageism as ***“… direct or indirect actions where someone is excluded, considered different, restricted, ignored, is treated as if they didn’t exist because of their age.”*** In Serbia, participants defined ageism as ***“…any discriminatory act of an individual or system toward other person, based on age.”***

**1.2 Older people’s lived experience of ageism and age discrimination**

As a part of the same project, when participants were asked about where they felt they had experienced discrimination because of their age, they highlighted several times and places including in healthcare provision, in inadequate pensions, on public transport, when trying to access education, in the workplace and in the financial sector where financial support was often denied.

“People over 70 years are not allowed [an] overdraft on their accounts. I ask what it is all about. I receive my pension regularly. I cannot be in debt. And he gives me the regulation that no overdraft is allowed to [a] person over 70.”

Older person, Serbia

Participants in the project also spoke about the ageism they experience within the family where ‘age-appropriate’ behaviour was often reinforced by younger family members.

“Discrimination against older people is a serious issue. I was widowed seven months ago and since my wife died, the people, my own family has discriminated against me for being older andwidowed. My brothers, my father-in law no longer listen to me. They don’t take any notice of what I say and I feel hurt. Some of my children support me, they tell me to take no notice but it is sad that your own family discriminates against you.”

Older man, Bolivia

**1.2.1 Access to work**

Older people face ageism and age discrimination in access to work. In a consultation with older people across 24 countries in 2019[[2]](#footnote-2), 41 per cent of the older people in the consultation said they had been refused work because of their age across a wide range of occupations and in permanent, temporary, part-time, casual, daily, paid and unpaid jobs. They said mandatory retirement ages, age limits in recruitment, negative stereotypes about older people’s ability to work and social norms saying that older people should not work all limited their opportunities to work on an equal basis with others. Others talked about the poor working conditions and limited nature of jobs available to older people. A lack of retraining opportunities, disregard for past experience and a failure to make accommodations for older people willing to stay in employment also restricted their access to work.

“In job advertisements, a certain age is required for applicants for example, under 35 years old. This affects the employment opportunities of those who are older.”

66-year-old man, Jordan

**1.2.2 Access to education and lifelong learning**

Older people face ageism and age discrimination in access to education and lifelong learning. In a consultation with older people across 23 countries in 2018[[3]](#footnote-3), participants described the negative attitudes towards their older age as a barrier to obtaining education and training. Some said they were teased, laughed at and humiliated because they were going to classes. Others said that older people were not welcome in educational establishments. Some had been told it was too difficult for them to learn because they were older.

“I’d like to have writing and reading lessons. I tried but they said it could be hard for me because of my age.”

 60-year-old woman, Rwanda

Some had internalised these ageist stereotypes and themselves said they were too old to learn.

**1.2.3 Access to justice**

Older people face ageism and age discrimination in access to justice. In a consultation with older people across 24 countries in 2019[[4]](#footnote-4), participants described the specific barriers they face to accessing justice because of their older age. They said they were shown disrespect officials or harassed by the police because of their age. Costs of getting justice were prohibitive because of their lower income in older age, courts and other despite resolution mechanisms were inaccessible to them and they were paid less in damages because they were older. Long, drawn-our proceedings towards the end of their lives another barrier.

“The insurance company refused to pay because, according to them, my lawyer was asking for too much money for a very old person. I’m still waiting for the judgement. I believe they have spun out this procedure for two years hoping that I could die before [it’s resolved].”

65-year-old man, Rwanda.

**1.2.4 Ageism and age discrimination throughout the COVID-19 pandemic**

**Ageist stereotypes and prejudicial language**

Throughout the pandemic, there have been numerous examples of ageism. The categorisation of COVID-19 as an older person’s disease and the stereotypical language used throughout the pandemic has led to stigmatization, discrimination and fear among some older people.

“Disturbing rumors, gossips, unverified information are being spread like a virus, including by my friends. The media speak of older people as a risk group. They try to warn, explain, scare us. But apparently younger people get sick too.” Older woman, Russia[[5]](#footnote-5)

We have seen and heard politicians, the media and the public using vilifying, stigmatising and discriminatory language when speaking about older people. Older people have repeatedly been labelled ‘vulnerable’, ‘weak’, ‘helpless’ and ‘frail’.[[6]](#footnote-6) Hashtags such as #BoomerRemover have been adopted on Twitter and the pandemic has been described as a welcome opportunity for ‘culling elderly dependents’. [[7]](#footnote-7)[[8]](#footnote-8)[[9]](#footnote-9) In Kenya, a Member of Parliament singled out legislators above the age of 58 in parliament and, as a joke, asked they be allowed to leave as they were vulnerable to COVID-19.[[10]](#footnote-10)

“With the coronavirus crisis, we have found many cases of bullying against older people. Social media users are disregarding the feelings of older people.” Older man, Jordan[[11]](#footnote-11)

**Age discrimination in public health responses**

Older people have been discriminated against on the basis of their age in responses to the virus.In a time of public emergency, international human rights law allows governments to introduce public health measures that may, to some extent, restrict people’s rights. Such measures must be based on scientific and medical evidence, be temporary, and be regularly reviewed, so that they are used only when strictly necessary and in accordance with national law. They should be proportionate and cause the least possible harm to people’s wellbeing. They are not allowed to discriminate.[[12]](#footnote-12)

Article 2 of the International Covenant on Civil and Political Rights fails to explicitly include age as a prohibited ground for discrimination and is also not included as a prohibited ground in the Covenant’s Article 4 on derogation of rights in public emergencies. As a result age-based measures restricting the movement and rights of older persons have been introduced across every region of the world throughout this pandemic, and in the vast majority of cases these have not been challenged as discriminatory.

Discrimination occurs when people are treated differently with the intention or result of denying them their human rights on an equal basis with others.[[13]](#footnote-13) While many people’s rights have been restricted by public health measures affecting the whole population, governments across every region have introduced age-based public health measures that further restrict the rights of older people.

The age criteria in these restrictions appear to be arbitrary, ranging from, for example, over the age of 58 in Kenya,[[14]](#footnote-14) over 60 in the Philippines,[[15]](#footnote-15) over 63 in Moldova,[[16]](#footnote-16) over 65 in Switzerland,[[17]](#footnote-17) over 67 in the North Macedonia Republic,[[18]](#footnote-18) over 70 in Serbia,[[19]](#footnote-19) over 75 in the Bahamas,[[20]](#footnote-20) and over 80 in Chile.[[21]](#footnote-21) The majority have imposed a restriction on all movement, while some have restricted specific activities including work,[[22]](#footnote-22) religious worship,[[23]](#footnote-23) use of public transport,[[24]](#footnote-24) shopping and going to restaurants.[[25]](#footnote-25) They have been introduced in low-, middle- and high-income countries. Some have been mandatory,[[26]](#footnote-26) while others have been advisory.[[27]](#footnote-27) Despite being introduced for public health reasons, they have resulted in older people’s rights being denied in a way that others’ have not and as such they are discriminatory and do not comply with international human rights law.

“The measures the government has taken with regard to older persons have done more harm than good. It doesn’t make sense for me, as an older person, to be quarantined alone in my house without being allowed to see my children and grandchildren. The psychological harm has been much greater than that caused by coronavirus.”

66-year-old woman living with her spouse in an urban area, Jordan[[28]](#footnote-28)

Age-based isolation measures have denied older people their rights on an equal basis with others in a number of areas, including the right to care and support to live autonomous and dignified lives[[29]](#footnote-29) [[30]](#footnote-30), the right to a family and private life[[31]](#footnote-31) and the right to work.

“Our income is greatly affected, we had to stop working. I know that this measure helps to prevent COVID-19, but unlike before, now we cannot buy what we want to eat.”

Lolo (Grandpa) Mario, 64, Punta, Sta. Ana, Manila, The Philippines[[32]](#footnote-32)

**Age discrimination in access to medical resources**

Older age has been included as the basis for deciding who has access to scarce medical resources in COVID-19 triage protocols[[33]](#footnote-33). The use of chronological age as criterion is arbitrary. Triage protocols for COVID-19 must be based on individualised clinical assessment, medical need, scientific evidence and ethical principles, such as fairness, proportionality and respecting the wishes of the patient. Basing decisions on any non-medical characteristics, such as age or assumed social worth, is unethical and discriminatory.

Some older people have not been able to access the treatment they need for COVID-19.[[34]](#footnote-34) In some cases, older people presenting with COVID-19 like symptoms have been turned away from health centers without being treated.[[35]](#footnote-35)

“There were only three ventilators in the hospital and they were in great demand. Five minutes later, my grandfather died. I reported this to the staff and one of them told me that they had to give the ventilator to a younger man who had been admitted as it is their policy to prioritise younger patients.”

Souzi (named changed to protect identity), Democratic Republic of Congo[[36]](#footnote-36)

Older residents in care homes have not been admitted to hospital. Some have been denied their right to informed consent to their medical treatment with Do Not Resuscitate (DNR) orders being placed on the care plans of residents of care homes without their consent or with undue influence.[[37]](#footnote-37) Others have not had access to health or other information.[[38]](#footnote-38) Others have faced reduced access to health care for non-COVID-19 health needs.[[39]](#footnote-39) Age has also been used to limit older people’s access to health care including through health insurance policies covering coronavirus which have limits of up to 60 or up to 65 years of age.[[40]](#footnote-40)

**Age discrimination in participation in clinical trials**

Upper age limits have been used as criteria to exclude older people from participating in clinical trials.[[41]](#footnote-41) This has had an impact on older people’s access to vaccines, with some governments not allowing its use in people over the age of 65, citing insufficient data[[42]](#footnote-42). The exclusion of older people from clinical trials, including those for the very illnesses they are disproportionately affected by such as diabetes, osteoporosis, heart disease, cancer[[43]](#footnote-43) and now COVID-19 [[44]](#footnote-44) is a long-standing practice.

**1.3 Intersectionality and ageism and age discrimination**

In a consultation HelpAge conducted in 2017 with across 19 countries, older women spoke about the discrimination they faced not only in access to employment and health care but also in public life.[[45]](#footnote-45)

“When you start to speak in a meeting and you are an older woman, you are shut down, not listened to.”

Group discussion, Uganda

The participants said that ageism and age discrimination were particularly strong against widowed or single women. Older widows were not allowed to participate in family and social events, some were accused of being witches. Those living with family members were insulted and denied any autonomy within the family in terms of food, participation in decision-making, freedom of movement, the right to work and disposal of their property according to their wishes.

“Single older women who are widowed, not married, or divorces face the most discrimination.’

51-year-old woman, Zimbabwe

Older women with disabilities were considered at particular risk of discrimination, being deprived of their liberty and right to live independently, forced to live in institutions, denied appropriate food and medical support with no access to employment or adequate social security.

“Older women with disabilities regularly face a rude attitude in hospitals, clinics, on transport…Society shows indifference to them. They often become victims of manipulation and discrimination.”

65-year-old woman, Kyrgyzstan

Older women living in rural areas, older women migrants and refugees, older women living with dementia or with HIV and AIDS, without children, with low literacy levels, considered to have a lower social status, without proper documentation or living in poverty were also identified as being subjected to intersectional discrimination.

**2. Legal, policy and institutional frameworks related to ageism and age-discrimination**

**2.1 International human rights law**

Protection against ageism and age discrimination is inadequate under international human rights law.

There are no obligations for states to eliminate ageism in older age, although Article 8b of the Convention on the Rights of Persons with Disabilities commits states parties “to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life".

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 (1990). Age is not included in the list of prohibited grounds in the non-discrimination articles of other international human rights treaties. Instead we have to rely on age being interpreted as falling under ‘other status’. The impact this has had on protection against age discrimination is significant, in the limited attention paid to it in the reporting and monitoring of these treaties and in its patchwork and inconsistent prohibition in national legislation.

New international standards are required to provide an unequivocal and robust prohibition of all forms of discrimination against older persons in all settings and in all aspects of life.

But prohibition alone is not enough. International standards within a new human rights convention on the rights of older people must also contain positive duties to address age discrimination and ageism and prevent them from happening in the first place.

An explicit prohibition would trigger law reform resulting in age discrimination and ageism being treated as seriously as other forms of discrimination in national legislation. Ageist hate speech would face similar sanctions as other forms of hate speech. We would better understand our rights in older age and be more easily able to make claims when we are discriminated against and courts could order forward looking remedies to prevent age discrimination in the future. Age would be recognised as a prohibited ground upon which public health emergency responses cannot discriminate.

States having a positive equality duty to assess the impact of laws, policies and decisions on older persons before they are introduced would also prevent age discrimination and ageism before they happen. In the context of a pandemic age equality assessments could be applied to age-based lockdown measures, triage protocols and clinical trial eligibility criteria, as well as the move to exclusive online access to services and the suspension of those services that disproportionately impact us when we are older.

States having positive duties to raise awareness of and eliminate ageist stereotypes and prejudices would mean that the justifications upon which age discrimination is deemed lawful would be tested to ensure they are not based on ageist assumptions, for example denying people equal access to health care on the basis of their age would be scrutinized and challenged. Education and other programmes would be introduced to tackle ageist norms and over time, change ageist attitudes and behaviour.

**2.2 Regional human rights law**

Protection against age discrimination in regional human rights law varies significantly.

Age is not explicitly listed as a ground for discrimination in Article 14 on the prohibition of discrimination in the European Convention on Human Rights and Fundamental Freedoms (1950) but instead must be interpreted as falling under ‘other status’. The same applies to the non-discrimination clause in Article E of the Revised European Social Charter (1996). Age is, however, listed as a prohibited ground in Article 21 of the Charter of Fundamental Rights of the European Union (2007).

Article 5 of the Inter-American Convention on Protecting the Human Rights of Older Persons (2015) prohibits discrimination against older persons based on age and pays particular attention to multiple discrimination. Article 32b on awareness raising commits states parties to tackling ageism by encouraging ‘actions to disseminate and promote the rights and empowerment of older persons, and avoid stereotypical images and language in relation to old age;’

Article 3 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa (2016) prohibits discrimination against older persons and commits states parties to tackling ageism by eliminating the ‘social and cultural stereotypes which marginalise Older Persons’ and taking corrective measures where for both discrimination and stigmatisation exist.

There is no regional Asian human rights instrument.

**2.3 National legal protection**

National legal guarantees against age discrimination are inconsistent and often inadequate.

A review of anti-discrimination legislation in Asia Europe Meeting (ASEM) countries in 2016[[46]](#footnote-46) showed that non-discrimination on the basis of older age is not a right that all older persons across ASEM countries enjoy. While European countries all had some form of legal protection against age discrimination, this was not the case in all Asian countries, for example Bangladesh, Brunei Darussalam, Cambodia, India, Indonesia, Japan, Kazakhstan, Lao PDR, Malaysia, Myanmar and the Philippines had no legal guarantees specifically prohibiting age discrimination.

Even where countries had some form of legislation prohibiting age discrimination, the guarantees provided may be limited in scope and not cover every aspect of older persons’ lives. Some countries only prohibited age discrimination in the area of employment. Few provided for multiple discrimination and the ability to bring claims against cumulative discrimination was rare. There was a broad in the exceptions allowed, and a wide variation sanctions and remedies available. In some countries age discrimination was only prohibited above a certain age.

The inadequate and inconsistent protection against age discrimination raises questions about the seriousness with which age discrimination is treated compared to other forms of discrimination and the extent to which certain exceptions may reinforce and perpetuate negative ageist attitudes and practice.

The review of ASEM countries also showed the different types of complaints mechanisms available to older persons from tribunals to national human rights institutions and equality bodies. The scope of these bodies varied, some could not receive complaints on age discrimination, others only in particular areas of life such as employment, healthcare, financial or care and support services. The review also showed the relatively low number of complaints made to national human rights and equality bodies on age discrimination compared to other forms of discrimination. [[47]](#footnote-47)

**3. Reports related to ageism and age discrimination and other relevant information**

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For further information, contact Bridget Sleap, Senior rights policy adviser, HelpAge International

bsleap@helpage.org

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7. <https://academic.oup.com/ageing/article/49/5/692/5831206> [↑](#footnote-ref-7)
8. [Are You OK Boomer Intensification of Ageism and Intergenerational Tensions on Social Media Amid COVID 19.pdf](file:///C%3A/Users/camil/AppData/Local/Temp/Temp1_OneDrive_1_1-19-2021.zip/Are%20You%20OK%20Boomer%20Intensification%20of%20Ageism%20and%20Intergenerational%20Tensions%20on%20Social%20Media%20Amid%20COVID%2019.pdf) [↑](#footnote-ref-8)
9. [An evaluation of tweets about older adults and COVID-19.pdf](file:///C%3A/Users/camil/AppData/Local/Temp/Temp2_Ageism%20and%20COVID-19.zip/An%20evaluation%20of%20tweets%20about%20older%20adults%20and%20COVID-19.pdf) [↑](#footnote-ref-9)
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