

Developing Comprehensive Anti-Discrimination Legislation : Fundamentals



What is comprehensive anti-discrimination legislation?

Comprehensive anti-discrimination legislation is a **law adopted with the purpose and effect of eliminating all forms of discrimination and promoting equality for all**. To be considered comprehensive, anti-discrimination legislation must **prohibit all forms of discrimination** on the basis of **all grounds recognized in international law**, in **all areas of life regulated by law**, provide for the **effective enforcement** of the right and **mandate positive actions** to address historic or structural discrimination. Comprehensive anti-discrimination law is distinct from specific legislation focusing on the rights of a particular group or discrimination occurring in a specific field.

In a context where inequality takes many forms and is caused by myriad of factors in a variety of fields, the enactment, enforcement and implementation of comprehensive anti-discrimination legislation is a necessary – but not sufficient – step which states must take. These laws have the effect of prohibiting all forms of discrimination, promoting equality and advancing diversity in all areas of life. In particular, the enactment and implementation of comprehensive anti-discrimination legislation is key to realize the rights of groups that are particularly at risk of discrimination and marginalization, including national or ethnic, religious and linguistic minorities.

The rights to equality and non-discrimination : what are the obligations of States in international law?

The rights to equality and non-discrimination are a fundamental component of international human rights law, enshrined in the *Universal Declaration of Human Rights* and standing at the core of all binding international human rights instruments, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination*. Building on these and other international legal standards, **discrimination** may be defined as **any distinction, exclusion, or restriction based on one or more protected grounds that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or preventing equal participation in any area of life regulated by law**.

The enactment, enforcement and implementation of comprehensive anti-discrimination legislation is necessary if States are to meet their international obligations to respect, protect and fulfil the rights to equality and non-discrimination for all. The adoption of comprehensive anti-discrimination legislation is also key to protect and advance minority rights, considering that the elimination of all forms of discrimination and the promotion of equality lie at the heart of the international minority rights framework, including the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.

The rights to equality and non-discrimination entail both negative and positive obligations for States in international law. States must adopt laws that prohibit all forms of discrimination and ensure the effectiveness of such legislation, including by establishing detailed rules, institutions and procedures to enforce and implement the rights to equality and non-discrimination and by setting out clear duties that apply to all stakeholders, including both private actors and public authorities. In addition, States must adopt positive measures that are designed to advance progress toward the realization of equality and inclusion for all, including those who have faced historical and structural disadvantage and marginalization.

What does comprehensive anti-discrimination legislation entail?

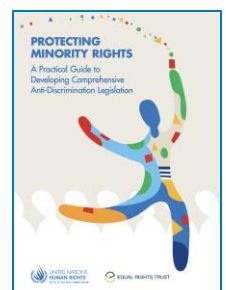
Over the course of the last two decades, there has been a growing global consensus on the need for comprehensive anti-discrimination laws and on the necessary content and essential elements of these laws. In 2022, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Equal Rights Trust published the *Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, the first definitive, authoritative and comprehensive guidance from the UN in this area of law. It explains that comprehensive anti-discrimination laws must:

- ❑ **Define and prohibit all forms and manifestations of discrimination on the basis of an extensive and open-ended list of grounds** and in all areas of life regulated by law, including all grounds recognized in international law (e.g., age, caste, descent, disability, indigenous origin, sex and gender, race and ethnicity, sexual orientation, etc.) and any other relevant grounds in a given society.
- ❑ **Provide explicit definitions of all forms of discrimination that are consistent with the definitions recognized in international human rights law:** direct discrimination, indirect discrimination, harassment, denial of reasonable accommodation, failure to ensure accessibility, segregation and victimization.
- ❑ **Provide protection from discrimination in all areas of life regulated by law.** Both public and private actors have obligations to refrain from and prevent discrimination.
- ❑ **Explicitly permit, require and provide for the adoption of positive action measures** designed to make progress towards equality for persons and groups exposed to discrimination and disadvantage.
- ❑ **Operationalize the rights to equality and non-discrimination within the public and private spheres by establishing equality duties**, including duties to identify and remove obstacles in order to ensure accessibility of the environment, information and communication, and facilities and services.
- ❑ **Provide for effective remedy**, including sanctions that must be effective, dissuasive and proportionate; recognition, compensation and restitution for survivors; and relevant institutional and societal remedies.
- ❑ **Establish the necessary procedural safeguards and adjustments to ensure access to justice**, including *inter alia* provision for the shifting of the burden of proof after a *prima facie* case of discrimination has been made by a complainant and provision for the prohibition of victimization.
- ❑ **Provide for the establishment of independent, specialized and accessible equality bodies with adequate resources, functions and powers** to fulfil their mandate to prevent discrimination and promote equality.
- ❑ **Mandate the adoption of other implementation measures necessary to address root-causes of exclusion, structural discrimination and make progress towards equality.** This includes, for instance, the development and implementation of equality and non-discrimination policies and strategies and the use of equality impact assessments in all aspects of public law and policy.

Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation

In December 2022, the [Office of the United Nations High Commissioner for Human Rights](#) (OHCHR) and the civil society organization [Equal Rights Trust](#) published a **Practical Guide to Developing Comprehensive Anti-Discrimination Legislation**. This guide provides clear, comprehensive and authoritative guidance on the laws that States must adopt to meet their obligations to respect, protect and fulfill the rights to equality and non-discrimination.

- The Guide is currently available online in Arabic, Chinese, English, Japanese (Nihongo), Portuguese, Russian and Spanish (<https://bit.ly/3p2Mf96> or scan QR Code) and can be sent in printed version upon request (30 copies minimum).
- Translation of the Guide into French and Korean is underway, with publication expected in 2024.
- Online global briefings are available in different languages on request.
- For governments, legislators, civil society organizations or others interested in developing comprehensive anti-discrimination law, please contact Claude Cahn (claudio.cahn@un.org) and Jim Fitzgerald (jim.fitzgerald@equalrightstrust.org).



➤ For more information on minority rights, equality and anti-discrimination law : <https://www.ohchr.org/en/minorities/minority-rights-equality-and-anti-discrimination-law>.