

# Kyrgyzstan

## 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 Kyrgyz legal framework fails to meet these standards in several respects.

### Equality and non-discrimination obligations

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

Kyrgyzstan 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>

Kyrgyzstan 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 the CEDAW Committee after exhausting domestic remedies. The State 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 the UN treaty bodies, Kyrgyzstan has not adopted comprehensive anti-discrimination legislation.<sup>3</sup> Whilst the State has adopted specific laws on gender equality, the rights of people with disabilities and people living with HIV/AIDS, none of these laws explicitly prohibit discrimination on the basis of age or contain express protection against **intersectional discrimination**.<sup>4</sup> Consequently, their application to older people is limited. In 2011, Kyrgyzstan adopted a specific law 'on Senior Citizens in the Kyrgyz Republic'. However, as noted below, this law operates primarily as a policy formation document, and does not create any new, substantive, enforceable rights.



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In the absence of comprehensive legislation, the principal guarantee against age discrimination in Kyrgyzstan stems from Article 24 of the Constitution, which declares ‘everyone’ equal before the law and courts and prohibits discrimination on the basis of age, alongside an open-ended list of grounds.<sup>5</sup> Singular non-discrimination provisions have also been adopted that vary in both their **personal** and **material** scope.<sup>6</sup> The main prohibition of discrimination applies in the area of employment: Article 9 of the Labour Code provides that “everyone has an equal opportunity to exercise their labour rights and freedoms”, and that “no one” may be restricted in the exercise of these rights “or receive any advantages in their realisation on the basis of (...) age” amongst other grounds.<sup>7</sup> Discrimination on the basis of age is also prohibited under Criminal Code.<sup>8</sup> However, this area of law falls outside the scope of the present study.

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

None of the laws outlined above provide express protection against **multiple or intersectional discrimination** occurring on the basis of age or any other grounds. Similarly, Kyrgyz law does not specify whether differential treatment based on the **association** of a person with a group sharing a protected characteristic, or a **perception** (whether accurate or not) that a person belongs to such a group, falls within the ban on discrimination. The **personal scope** of the law is therefore unclear.

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

With one small exception, Kyrgyz legislation does not define **forms of prohibited conduct**: the prohibition of **direct and indirect** gender-discrimination is made explicit under Article 5 of the Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women.<sup>9</sup> However, this law does not expressly apply to older people, and there has been little judicial practice relating to indirect discrimination on other grounds.<sup>10</sup> Other forms of discrimination, including **ground-based harassment, denial of reasonable accommodation, and victimisation** are not defined as forms of prohibited conduct under national law, and the extent to which these concepts are covered by the constitutional equality guarantee or Labour Code protections is unclear: a significant protection gap.

On **justifications** and **exceptions**, Article 23(2) of the Constitution provides that human rights may be “limited by the Constitution and laws” for specific purposes, including the protection of national security, public order, health and morals, and the rights and freedoms of others. A specific exception to the prohibition of discrimination is provided under Article 9 of the Labour Code, which states that the “establishment of differences, exceptions, preferences and restrictions, which are determined by the requirements inherent in a particular type of work, established by law” shall not constitute discrimination. Differential treatment may also be permitted when “conditioned by the special care of the state for people in need of increased social and legal protection”. As discussed below, this exception is highly problematic.

Several age discrimination cases have been heard by the Constitutional Chamber of the Supreme Court. In many of these cases, the Court has upheld age-based distinctions, such as those requiring the mandatory retirement of certain classes of worker, as legitimate.<sup>11</sup> Under international human rights law a differentiation may only be justified in limited circumstances, where measures adopted pursue a legitimate aim and are necessary and proportionate to that aim. Judicial practice in Kyrgyzstan does not conform to these standards, and practice on age discrimination to date has been weak.

## 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.

Article 24(1) of the Constitution permits the adoption of **positive action**. Special measures adopted in accordance with Kyrgyzstan's international obligations shall not constitute discrimination provided that measures are specified by law, and aim to ensure equality of opportunity for groups exposed to discrimination. This Article is broadly compliant with international human rights standards, despite some weaknesses.<sup>12</sup> As discussed, a specific exception to the prohibition of discrimination, linked to the 'special care' of "persons in need of increased social and legal protection", is established under Article 9 of the Labour Code. Whilst this Article may – in principle – be read as permitting positive action, it lacks the procedural safeguards established under the Constitution, and there is a risk that it could be applied to justify the adoption of discriminatory measures based on paternalistic and ageist assumptions relating to older age.

In 2011 Kyrgyzstan adopted the Law 'On Senior Citizens in the Kyrgyz Republic'. The law provides the framework for the development of **state policy** in relation to 'senior citizens', who are defined as men aged 63 and over and women aged 58 and over who have reached retirement age.<sup>13</sup> Articles 4 and 5 of the law establish the main principles of state policy in this area, whilst Article 8 provides for the engagement and participation of older people in policy development. Article 10 of the law contains a broad non-discrimination guarantee. However, no enforcement mechanisms are established under the law, meaning that this provision is largely aspirational. Outside of this framework document, Kyrgyz legislation does not impose a specific legal obligation on duty-bearers to adopt **equality policies and strategies** relating to older people, or to mainstream their rights. Similarly, the law does not require the adoption of **equality impact assessment** to identify and mitigate the impacts of (age) discriminatory laws and policies before they are adopted.

## 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.

The Constitutional Chamber of the Supreme Court is empowered to review national laws and strike-down legislation where it is inconsistent with the Constitution. Any individual who has experienced discrimination as a result of the application of national law may submit a complaint directly to the Court, requesting that the legislation be disapplied. However, the Court does not have the power to hear individual discrimination complaints.<sup>14</sup> Such cases may be heard by the civil courts, in accordance with the requirements of the Civil Code and Civil Procedure Code. Article 9 of the Labour Code provides that a person who considers that they have been discriminated against in employment has the right to bring a case to court with an application for the restoration of their rights as well as compensation for pecuniary and non-pecuniary damages. In practice, however, few complaints make it this far, and the code does not contain provisions relating to the transfer of the **burden of proof** in discrimination cases, which acts as a significant impediment to access to justice.<sup>15</sup>

Kyrgyzstan has not established a specialised **equality body**, although it does have a national human rights Institution: the Ombudsperson (Akyikatchy) of the Kyrgyz Republic, which was established in 2002 and has a constitutionally recognised role in upholding human rights. The ombudsperson has broad promotion and prevention functions, which are detailed under Articles 3 and 8 of the Law on the Ombudsperson. The ombudsperson may issue recommendations, and where a breach of the law is established, it may refer cases to relevant investigatory bodies. However, it does not have strict enforcement powers. In 2017, the ombudsperson issued a study on stereotypes and discrimination affecting older people in Kyrgyzstan. The study explores a range of topics, including *inter alia*, awareness of age discrimination in different areas of life (including the workplace, healthcare, the private sector, and within the family); the effect of stereotypes on the enjoyment of rights by older people; and the system of social care for older people; before issuing relevant recommendations.<sup>16</sup>

## Gaps and opportunities

Despite constitutional protection against age discrimination and the adoption of some specific equality legislation, taken as a whole, the Kyrgyz legal framework on discrimination is weak, with patchy and inconsistent protections. Whilst the law does offer some guarantees against age discrimination, there are several gaps within the legal framework that undermine its effectiveness in practice. In particular, discrimination is rarely defined under national law, and multiple and intersectional discrimination are not explicitly prohibited.

The prohibition of discrimination does not apply evenly in all areas of life, and in some areas (for instance, discrimination in the provision of goods and services) there are few substantive protections. Broad exceptions to the discrimination framework are established under the Labour Code, which lack specificity and create a risk of arbitrary application. Positive action measures are not mandated, and despite the adoption of the Law on Senior

Citizens in 2011, national legislation has not established a general legal framework for advancing equality for older people. Judicial understanding of the rights to equality and non-discrimination is weak, and implementation of the existing legal framework is poor. In this context, much is required to ensure the full enjoyment of older people's rights in Kyrgyzstan. To ensure full and effective protection, Kyrgyzstan 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. International Covenant on Civil and Political Rights, Articles 26 and 2(1).

3. Human Rights Committee, Concluding Observations: Kyrgyzstan, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014; para. 8; Committee on Economic, Social and Cultural Rights, Concluding Observations: Kyrgyzstan, UN Doc. E/C.12/KGZ/CO/2-3, 7 July 2015, para. 5; Committee on the Elimination of Racial Discrimination, Concluding Observations: Kyrgyzstan, UN Doc. CERD/C/KGZ/CO/8-10, 2018, paras 10–11.

4. See, respectively, Law of the Kyrgyz Republic 'On State Guarantees of Equal Rights and Equal Opportunities for Men and Women'; Law of the Kyrgyz Republic 'On the Rights and Guarantees of Persons with Disabilities'; and Law of the Kyrgyz Republic 'On HIV/AIDS in the Kyrgyz Republic'.

5. Constitution of the Republic of Kyrgyzstan, Article 24(1), and 24(2).

6. For an in-depth assessment of these laws, see Equal Rights Trust, *Looking For Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, Chapter 2.2.3.

7. Labour Code, Article 9.

8. Criminal Code, Article 185.

9. However, it should be noted that the definition of 'direct' and 'indirect' discrimination under the Law are somewhat confusing and may not fully comply with international standards. See further, Equal Rights Trust, *Looking For Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, pp.59–60.

10. Article 185 of the Criminal Code refers to the 'direct or indirect' restriction of rights or conferral of advantages, implying that the ban on discrimination encompasses both **direct and indirect discrimination**, but this is not explicitly stated.

11. For further discussion of these cases, see Equal Rights Trust, *Looking For Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, pp.41–43. For a more recent case exploring age-based distinctions in adoptive practices, see Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Case No. 03-r, 2020.

12. In particular, positive action is not expressly mandated, and the Constitution does not require that such measures be time-limited and discontinued when their objectives have been met.

13. Law 'On Senior Citizens in the Kyrgyz Republic', Article 2.

14. For instance, those involving a dispute between an employer and employee.

15. See further, Equal Rights Trust, *Looking For Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, Section 2.3.

16. Ombudsmen of the Kyrgyz Republic, *Stereotypes and Discrimination against Elderly People*, 2017, available at: <https://ombudsman.kg/images/files/news/2018/specdokladi/pogilie.pdf>

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