

# Paraguay

## 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 Paraguayan legislative framework fails to meet these requirements.

### Equality and non-discrimination obligations

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

Paraguay 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>

Paraguay 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, CEDAW Committee and CRPD Committee after exhausting domestic remedies. Additionally, Paraguay is a party to relevant regional human rights instruments. The State has ratified the American Convention on Human Rights. However, the State has not ratified the Inter-American Convention Against All Forms of Discrimination and Intolerance, which contains important non-discrimination guarantees, or the Inter-American Convention on Protecting the Human Rights of Older Persons, which provides a specific framework for the protection of older persons' rights.

### 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?	✗

Paraguay has not adopted comprehensive anti-discrimination legislation, despite the recommendations of UN treaty bodies.<sup>3</sup>



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In the absence of such legislation, protections against discrimination are patchwork and fragmented across different laws and policies. Article 46 of the Constitution declares that “inhabitants of the Republic are equal in dignity and rights”. This same provision sets out a broad prohibition of discrimination. However, no grounds are listed under this article, and it is unclear, therefore, whether “age” would be recognised as a protected characteristic. Age is expressly listed as a ground under Article 88 of the Constitution, which prohibits discrimination against workers. However, as noted under the heading of enforcement, below, there are no clear mechanisms established under the Constitution to enforce this guarantee, and so its impact is substantively limited.

Outside of the Constitution, Paraguay has adopted some specific equality legislation regulating the rights of particular groups. Principal amongst these, for the purposes of this study, is Law No. 1885 of 2002 on Older Persons. According to the law, older persons are afforded priority in areas such as health care, housing, food, transportation, education, and employment. Article 3 of the law further establishes the right of all older persons to non-discrimination in the exercise of public or private functions. As with the Constitution, there are no specific mechanisms established to enforce this guarantee, limiting its effectiveness. Outside of these laws, singular non-discrimination provisions have also been adopted that apply in particular fields of life. For instance, Article 9 of the Labour Code prohibits discrimination against workers on the basis of “race, colour, sex, religion, political opinion, or social condition”. Whilst age is not expressly listed as a protected characteristic, it could be considered a form of “social condition”. Article 47 of the Code further provides that clauses of employment contracts which set lower salaries based on age, amongst other factors, shall be declared null and void.

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. Moreover, national 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. In this regard, it is notable that Law No. 1885 only prohibits discrimination against older persons, who are defined under the law as persons aged 60 years and older. Other persons who experience discrimination due to perceptions relating to their age that fall outside of this chronological age group (for instance, workers in their 50s who are perceived as elderly due to their hair colour, or workers in their 40s perceived to possess weaker technology skills due to ageist stereotypes) are not protected. This is a significant protection gap.

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

None of the above laws distinguish, or define, different forms of prohibited conduct. Whilst direct discrimination would clearly fall within the ban, it is not clear whether **indirect discrimination** or **ground-based harassment** are covered. In 2019, the Ministry of Labour issued an administrative resolution on harassment and violence, which establishes a complaints procedure for cases of harassment occurring in the workplace. Whilst the resolution does not expressly prohibit age discrimination, a degree of protection may nonetheless be afforded to older persons in this (limited) area of life. None of the laws listed above expressly recognise denial of reasonable accommodation as a form of discrimination on the basis of disability or any other grounds. In its 2013 Concluding Observations the Committee on the Rights of Persons with Disabilities criticised the State in this regard, calling on Paraguay to “adopt legislation prohibiting discrimination”, that expressly recognises denial of reasonable accommodation as a form of prohibited conduct.<sup>4</sup>

The above laws do not establish specific rules relating to **justification** in discrimination cases although a particular **exception** to the ban is established under Article 3 of Law No. 1885. That provision clarifies that the prohibition of discrimination against older persons may not apply to persons with “physical or mental disabilities”. The wording of this provision is highly stigmatising. This exception is extremely broad in its scope and is built upon negative stereotypes relating to ageing and disability. In this regard, Article 3 clearly falls short of the requirements of international law, which provides that the right to non-discrimination should apply equally to all persons sharing a protected characteristic.

## 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 service providers to assess the impact of their policies and mainstream the rights of discriminated groups in their work.

Article 46 of the Constitution of Paraguay provides “[t]he protections established concerning unjust inequalities will not be considered as discriminatory factors, but as egalitarian [factors]”. This provision could be read as permitting (although not expressly requiring) the adoption of **positive action** measures, but this is not made explicit. Some specific measures designed *ostensibly* for the benefit of older people have been adopted in Paraguay, but these fall beyond the scope of discussion of the present study.

Whilst the State has adopted policies, plans, and programmes that are relevant to human rights protection for older people, the law as a whole 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.

One of the most significant shortcomings of Paraguay’s legal framework is the absence of effective enforcement and implementation mechanisms. Neither the Constitution, nor Law No. 1885, establishes a clear process through which violations of the rights to equality and non-discrimination can be redressed. Similarly, the Labour Code does not establish a procedure for challenging acts of discrimination, although specific rules are established for violations of other labour rights (for instance, in the case of unfair dismissal), which may be applicable in some cases. In principle, a person who has experienced discrimination in violation of Article 9 of the law may file a claim under the Civil Code and request economic compensation for moral damages. However, there are no rules established for the transfer of the **burden of proof** in discrimination cases, and in the absence of such rules, the difficulties of proving discrimination may prove to be an insurmountable barrier to justice.

Paraguay does not have a statutory **equality body** although a ‘Defender of the People’ is established pursuant to Article 279 of the Constitution. The Defender of the People’s Office is organised structurally into different departments, that are each responsible for addressing specific human rights issues. Amongst these departments is the Department for Older Persons which is responsible for assisting, guiding, accompanying and intervening *ex officio* in complaints made by older persons. However, the Defender of the People has no strict enforcement powers, limiting its effectiveness. Moreover, the institution has only been accredited with a ‘B’ status by the United Nations Global Alliance for National Human Rights Institutions, meaning that it does not fully comply with the Paris Principles on independence.<sup>5</sup>

## Gaps and opportunities

Paraguayan law contains a number of gaps that undermine protections of the rights to equality and non-discrimination in practice. Whilst the state has adopted age-specific equality legislation, this legislation does not create an independently enforceable right to non-discrimination, and the law establishes a broad exception to the ban, which risks stigmatising older people with disabilities, and entrenching ageist stereotypes. Whilst age discrimination is – in principle – prohibited under the Constitution, no clear mechanisms are established to enforce this guarantee.

Whilst some protection against discrimination is afforded under the Labour Code, the law does not define different forms of prohibited conduct, or expressly prohibit multiple discrimination, discrimination based on association, or discrimination based on perception. Moreover, the law does not provide for a transfer of the burden of proof in discrimination cases, impeding access to justice for older people who seek to enforce their rights. Consistent with the findings of human rights bodies in this area, it is essential that Paraguay adopts comprehensive anti-discrimination legislation to address these gaps.

### Endnotes

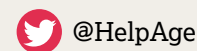
1. For a discussion of the human rights framework on age discrimination see HelpAge International, *Advancing equality for older people, 2022*, available at: [www.helpage.org/AgeEquality](http://www.helpage.org/AgeEquality)
2. International Covenant on Civil and Political Rights, Articles 26 and 2(1).
3. See, for instance, Human Rights Committee, Concluding Observations on Paraguay, UN Doc. CCPR/C/PRY/CO/4, 2019, paras. 14–15.
4. Committee on the Rights of Persons with Disabilities, Concluding Observations on Paraguay, UN doc. CRPD/C/PRY/CO/1, 2013, paras. 13–14. It should be noted that some other laws do call for certain duty-bearers to make reasonable adjustments for people with disabilities in discrete areas of life. See, for instance, Law No. 4962 of 2013, Article 8 and Law No. 3540/08, Article 24.
5. See further, Global Alliance for National Human Rights Institutions, Accreditation Status as of 3 August 2021, available at: <https://ganhri.org/wp-content/uploads/2021/08/StatusAccreditationChartNHRIs.pdf>

The report was developed with generous funding by AARP.



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