**Questionnaire 1: Ageism and Age Discrimination**

**Preliminary remark:** The Federal Anti-Discrimination Agency (FADA) is not part of the Federal Government, Thus the input from FADA does not necessarily reflect the Federal Government’s position, however, the information given by FADA should be brought to the knowledge of the Independent Expert

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

1. **What forms does age discrimination affecting older persons take and which ones are the most prevalent? Where available, please provide concrete examples and collected data including in employment, education, social protection, and health, financial and social services.**

According to the **German Federal Anti-Discrimination Agency (FADA),** age discrimination is particularly prevalent in the domain of employment and occupation. On the one hand, discrimination experiences on grounds of older age are often made in the phase of job seeking and the application process. On the other hand, people might also experience discrimination based on their age in existing employment relationships. In these cases, discrimination is often perceived in form of material disadvantages such as the comparatively poorer evaluation of working performances or discriminatory wage differences.

There are also often complaints about age discrimination in the area of financial services. People affected report in particular that, because they had reached a certain age limit, they could no longer obtain credit or they complain about age being taken into account when calculating insurance tariffs. For instance, FADA regularly receives complaints from people who feel that they are discriminated against by age-related increases in their car insurance premiums.

FADA also regularly receives requests for advice from people who feel that they have suffered age discrimination in the area of associations and voluntary activities. These generally concern age limits for voluntary activities, e.g. for participation as judges or jury members, but also higher contributions for older club members.

Sources:

[Third Joint Report](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/BT_Bericht/gemeinsamer_bericht_dritter_2017.pdf?__blob=publicationFile&v=16) from the Federal Anti-Discrimination Agency and the Relevant Federal Government and Parliamentary Commissioners, 2017 (see chapter 1.3.2.1, 1.3.3.1, 1.3.9.1); [Experiences of discrimination in Germany](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/expertise_diskriminierungserfahrungen_in_deutschland.pdf?__blob=publicationFile&v=8) - Results of a representative survey and a survey of the people affected, 2017 (see chapter 6.5, 6.6).

From the perspective of German development cooperation older persons in countries of the Global South are frequently discriminated against because of insufficient access to assistive technologies (AT) and because of the fact that physical and digital infrastructure, information, education, job offers etc. are not designed in an accessible manner for all [(Universal Design)](http://universaldesign.ie/What-is-Universal-Design/Definition-and-Overview/). The prevalence of disabilities increases with the age, which in turn increases the need for AT and accessible environments. Both of which are necessary for independent living, social inclusion and healthy, productive and decent lives. Worldwide, one billion people need AT [(WHO, 2016)](https://apps.who.int/iris/bitstream/handle/10665/207694/WHO_EMP_PHI_2016.01_eng.pdf;jsessionid=4069AFF4F801F43E43003F8E604FD672?sequence=1), while 9 out of 10 persons with disabilities do not have access to glasses, wheelchairs, prostheses, hearing aids and other necessary AT [(WHO, 2018)](https://www.who.int/news-room/fact-sheets/detail/assistive-technology#:~:text=family%2C%20and%20society.-,Today%2C%20only%201%20in%2010%20people%20in%20need%20have%20access,personnel%2C%20policy%2C%20and%20financing.). With an ageing global population and a rise in noncommunicable diseases, the number of people needing AT is expected to double to reach two billion people by 2030 with many older people needing two or more AT [(WHO, 2021)](https://www.who.int/news-room/fact-sheets/detail/assistive-technology#:~:text=family%2C%20and%20society.-,Today%2C%20only%201%20in%2010%20people%20in%20need%20have%20access,personnel%2C%20policy%2C%20and%20financing.). This challenge is especially evident in many low-income and middle-income countries, where only 5-15% of people who require AT and technologies have access to them [(WHO, 2021)](https://www.who.int/disabilities/technology/en/). Reasons include high cost of AT, low availability, poor quality, a lack of awareness of the benefits of AT, lack of screening/adaptation staff, lack of national strategies and a lack of national standards ([UNICEF 2015](https://www.unicef.org/disabilities/files/Assistive-Tech-Web.pdf)). The need for assistive technologies and accessible environments is especially crucial in the context of the COVID-19 pandemic. Health information, educational material in both physical and digital formats as well as hand washing stations and vaccination centers need to be accessible by their design and through sufficient provision of affordable AT. This poses a great challenge, especially in many low- and middle-income countries [(UN SG, 2020)](https://www.un.org/development/desa/disabilities/covid-19.html).

1. **Please provide information and data collected about the causes and manifestations of ageism in society, both for younger and older generations, and how it translates into discriminatory practice**

According to the **German Federal Anti-Discrimination Agency (FADA),** age-based stereotypes might often form the starting point and the justification of discrimination against older people. Especially in the area of employment, older people are often thought to no longer possess particular skills or they are perceived as being less competent (especially as regards efficiency, ability to adapt to innovations and dealing with modern technologies) because of their age.

The ongoing COVID-19-crisis has also demonstrated that ageist attitudes about older people still prevail and might easily be reproduced. For instance, FADA has received several complaints about media reports and comments by politicians that refer to at-risk populations as “the old and the weak”. While not discriminatory in the legal sense, this is perceived as stigmatising. Such verbiage also denies that the group of older people is very heterogeneous, encompassing persons with very different preconditions.

Source:

[Experiences of discrimination in Germany](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/expertise_diskriminierungserfahrungen_in_deutschland.pdf?__blob=publicationFile&v=8) - Results of a representative survey and a survey of the people affected, 2017 (see chapter 6.5)

1. **From an intersectional perspective, are there specific factors that aggravate ageism and age discrimination and how? Please provide concrete examples and collected data where available.**

With a view to the fact that older persons are especially vulnerable to suffer from severe health implications after a coronavirus infection, many inadequate conducts have been observed.

On the one hand the solidarity for older persons and the common efforts to minimize the risk for infections for all age groups are overwhelming . There are many volunteers and nonprofit organizations who take care of older persons not being able or willing to leave their homes. Many take part in upholding social contacts and fight loneliness. On the other hand, there have been recommendations for older persons not to go shopping themselves to prevent infections of younger persons and risks for themselves.. There have been many well meant offers for support by younger persons who approached older persons on their way to the super-market and offered their aid – in the end without success. Many older persons considered these offers as paternalistic. Those who are still mobile want to do their shopping themselves-with full respect to the imposed hygiene and distance rules. The same holds true for not being allowed to meet or take care of their grandchildren. The role as grandparents is of utmost importance for many persons aged 60+ .

At the beginning of the pandemic many residences for older persons and care homes reacted with fully isolating their inhabitants. Neither family members nor friends were allowed to visit, and walks outside the institutions were forbidden. The inhabitants suffered to a high extent from loneliness and other psychological phenomena and – due to a loss of mobilizations – increasingly lost their physical abilities. For some persons suffering from dementia their mental state deteriorated due to the lack of contacts. Even persons dying were kept from being accompanied by relatives.

According to the joint decisions by the Federation and the Länder special protective measures with due regard to local epidemiological circumstances and settings are to be taken for vulnerable groups, especially for older persons’ residences, care homes and institutions for persons with disabilities. Protecting vulnerable groups from disease and limiting the spread of infections in the institutions should be at the focus of measures, but not the full isolation of the persons affected.

The Länder have issued executive orders to that aim. In addition, the institutions themselves have space for decisions based on the respective rules and have partially enacted stronger measures. Thus, inhabitants continued to be isolated or restricted in their contacts and curfews for longer periods with the negative impacts described above. The Federal Ombudspersons for Care has issued a recommendation on Dec. 4th, 2020 for all institutions aiming at contacts reductions for the inhabitants, with as little infringements as possible. The recommendations were distributed to all institutions.

The Federal Ministry for Family Affairs has commissioned BAGSO (German National Association of Senior Citizens' Organisations) to issue a legal study regarding the restrictions of contact and curfew in care and residential institutions for older persons, to organize the conference “Guaranteeing Social Participation of Persons in care and residential institutions under Corona Circumstances”, as well as to publish an opinion based on the study and the conference. The legal study by Prof. Dr. Friedhelm Hufen concludes that several violations of fundamental rights are recognized. BAGSO’s opinion formulates minimum standards for the enjoyment of the tight to social participation and social contacts.

In the light of the start of the vaccinations campaign against COVID-19 the Federal Council on Ethical Behavior has urged to lift the general contact restrictions in nursing homes and residences of the elderly after the vaccination of all willing inhabitants of such institutions, even if some persons in the institutions have not been vaccinated for various reasons. Instead the non-vaccinated inhabitants should continue to be protected by general measures such as FFP 2 masks, protective clothing for cares, testing etc.

The results of the study “Experiences of discrimination in Germany” carried out on behalf of the **German Federal Anti-Discrimination Agency (FADA),** show that not all societal groups share the same risk of being discriminated against on grounds of old age but some are more vulnerable: Especially women - compared to men - and persons with disabilities - compared to persons without disabilities - have a significantly higher risk of being discriminated against on grounds of old age.

Source:

[Experiences of discrimination in Germany](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/expertise_diskriminierungserfahrungen_in_deutschland.pdf?__blob=publicationFile&v=8) - Results of a representative survey and a survey of the people affected, 2017 (see chapter 5.5)

From the experience of German Development cooperation with indigenous peoples we would like to highlight from an intersectional perspective the specific impact of Covid-19 on indigenous elders as particularly at risk due to crowded and multi-generational housing. We would also like to highlight the cultural implications if elders pass away in indigenous communities since they play a key role in keeping and transmitting traditional knowledge and practices to future generations (compare also UNDESA Policy Brief #70p. 2 ; <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_70.pdf>

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

1. **What international, regional and national legal instruments are in place to combat ageism and age-discrimination?**

Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation) prohibits age-based discrimination in employment and occupation, thus covering any unjustified differentiation on grounds of age. Furthermore, Germany has ratified the International Covenant on Economic, Social and Cultural Rights of the United Nations.

Germany is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. All these treaties are applicable without age limits and the rights enshrined must be guaranteed to older persons as well.

On the regional level the Charter of Fundamental Rights of the European in its Article 21 para 1 explicitly prohibits any discrimination on the grounds of age. Furthermore, Germany has ratified Article 23 of the Revises European Social Charter, which enshrines strong social rights for older persons.

1. **Please also note any action plans or policies to raise awareness and combat ageism (including anti-ageism in school curricula) and to move toward a more age-friendly and inclusive society.**

Already in 2010, The Federal Ministry for Family Affairs has initiated the program “New Images of Ageing” (www.program-altersbilder.de) in implementation of the recommendation of the Expert Commission for the sixth Government Report on Older People (Images of Ageing in Society). For more than a decade various measures and actions sensitize for differentiated images of ageing. The program has initiated a platform for the topic to start a broad public debate and continues to do so, aiming at making aware of the consequences of specific images of ageing in diverse settings but also sensitizing all actors in society for the potentially negative consequences of certain images of ageing.

It aims at spreading the knowledge of the very diverse forms of living in the older generation. Thus, the images of living in old age shall be renewed and older persons be encouraged to contribute their abilities self-determined to society. Especially young persons are targeted to reconsider their image of ageing. The readiness of young and old to learn from each other is inspired. Transporting realistic images of ageing is a central pillar for a common understanding and social cohesion.

The COVID-19 pandemic now has narrowed the view on ageing. Reflecting the fact that older persons are very prone for severe health implications after infection, the slowly changing, differentiated and potential led image of ageing is moving to the background. Again, older persons are identified with sickness, invalidity and especially vulnerability. Potentials, resilience and power are shifting to the obscure, at least for the time passing. Therefore, the program is continued.

German Development cooperation implements a human rights-based approach. Its Guidelines on Incorporating Human Rights Standards and Principles, including Gender, in Programme Proposals for Bilateral German Technical and Financial Cooperation (2013) also consider “disadvantaging certain groups” as one of four risk areas. Age-related discrimination is explicitly mentioned in this section. (<https://www.bmz.de/en/zentrales_downloadarchiv/themen_und_schwerpunkte/menschenrechte/Leitfaden_PV_2013_en.pdf>)

1. **At the national level, please outline the legal protections available against age discrimination and indicate whether age is explicitly recognised as a ground for discrimination? If so, are there specific areas for which equality is explicitly guaranteed? Are there any areas where differential treatment based on older age is explicitly justified?**

At the constitutional level, Article 3 (1) of the Basic Law (Grundgesetz – GG) obliges state authority to treat all persons equally before the law. At the same time, Article 3 (1) GG does not preclude the legislature from differentiating. However, any differentiation must always be justified by objective reasons that are appropriate in light of the aim and the extent of the unequal treatment. The constitutional requirements for the objective reasons justifying the unequal treatment can range from a standard limited to the mere prohibition of arbitrariness to strict requirements of proportionality. The less control the individual has over the grounds on which the statutory differentiation is based, the stricter the requirements for the legislature. One such ground is a person’s age (cf. Decisions of the Federal Constitutional Court (Entscheidungen des Bundesverfassungsgerichts), BVerfGE 142, 353, § 69 with further references).

The category of age is included in the catalogue of the General Act on Equal Treatment (German abbreviation: AGG), cf. Section 1, the act to implement European Directives on the principle of equal treatment.

The prohibition against discrimination under labour law in the AGG includes discrimination against employees on grounds of age. The prohibition against discrimination applies to applications, in the context of recruitment, in relation to promotions, conditions of employment (e.g. the level of pay, working hours, holidays and decent treatment in the working environment) and dismissals.

On the other hand, the AGG does not invalidate legal provisions linked to age a priori (e.g. Section 622 (2) of the German Civil Code (BGB), Section 1 (3) KSchG (an act on the protection against unfair dismissal). The only question is whether it is in line with European law. Regarding age discrimination, the ECJ has held that it is for the courts to ensure the full effectiveness of the general prohibition against age discrimination by not applying any conflicting national-law provision.

Beyond the fields of employment and occupation, the General Equal Treatment Act also applies to insurance and access to and supply of goods and services, for example when shopping, searching for a flat, or conducting insurance and banking transactions (Section 19 (1)). Protection against age discrimination is limited to so-called bulk business, which is usually conducted without regard to the individual involved. A difference of treatment on the ground of age may be permissible when there is an objective reason for it (Section 20 (1)).

1. **Do the existing legal protections against age discrimination allow for claims based on intersectional discrimination, that is discrimination, which is based on the intersection of age and other characteristics such as race, ethnicity, gender, disability, sexual orientation or other status?**

Intersectional discrimination is discrimination due to multiple factors (within the meaning of Section 1 AGG), when they are not seen in isolation. This is a form of multiple discrimination. Other forms of multiple discrimination are additive (when a person is repeatedly discriminated against on several grounds) and cumulative discrimination (a single case of discrimination on several grounds).

AGG Section 4 contains a clarifying norm regulating the case of multiple discrimination, stating that in the case of different treatment on the basis of several grounds mentioned in Section 1 of the AGG, each of these different treatments must be examined individually for its justification. If difference in treatment in these cases is justified on one of the grounds mentioned in Section 1 of the AGG, it does not follow that it is justified on another ground mentioned in Section 1 of the AGG. The underlying system of the AGG is the basis for this, independent of Section 4 AGG.

1. **What legal and other measures have been taken to address and protect from racism, sexism, ableism or other similar forms of discrimination that might be useful models for addressing ageism?**

The German government and the implementing agencies of German development cooperation are working to systematically anchor the inclusion of people with disabilities. Based on the guiding principle of the 2030 Agenda “Leave no one behind”, the Federal Ministry for Economic Cooperation and Development (BMZ) published the strategy paper ["Inclusion of persons with disabilities into German development cooperation"](https://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier501_inclusion.pdf) in 2019. The strategy entails a commitment to include people, of all gender, religions, social origins, disabilities, ages and other status. The BMZ understands that people with disabilities form a heterogeneous group (different sex, different age groups, social origins). In order to make inclusion effective, German development cooperation is committed to the strategy of including people with disabilities in all projects by following the twin track approach. This supports not only the identification of ableism, but also ageism and other forms of discrimination.

1. **Please indicate if there are institutional or complaints mechanism to address inequalities or grievances related to ageism and age discrimination. If so, please provide statistics on cases and types of cases received?**

If older people are employees (Arbeitnehmer), they are protected by the prohibition against discrimination of the AGG. If the older people are workers in employee-like positions (Beschäftigte), they have the right under Section 13 AGG to file a complaint with the competent body of the institution providing the employment if they feel they have been discriminated against because of their age in connection with their employment relationship by their employer, their superiors, other workers or third parties.

In the case of violations of the discrimination prohibition, those affected can file claims for compensation and damages in court (Section 15 AGG). Section 22 AGG states that the burden of presentation and proof is reduced for plaintiffs.

The **Federal Anti-Discrimination Agency (FADA)** is an independent focal point that provides unbiased support to persons who have experienced discrimination on grounds of racism or their ethnic origin, gender, religion or belief, on grounds of disability, their age or their sexual orientation. It was established in 2006, after the General Equal Treatment Act (German abbreviation: AGG) had entered into force. The FADA and its tasks have been stipulated in this Act and comply with the EU directives on equal treatment. The counselling team provides information on legal claims and outline possibilities of taking legal action within the scope of legal provisions for the protection against discrimination.

Statistics on cases and types of complaints are published in the reports that are submitted to the German Bundestag at regular intervals of four years ([Third Joint Report](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/BT_Bericht/gemeinsamer_bericht_dritter_2017.pdf?__blob=publicationFile&v=16) from the Federal Anti-Discrimination Agency and the Relevant Federal Government and Parliamentary Commissioners, 2017, see chapter 1.3) and the Annual Reports of FADA ([Annual Report 2019](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Jahresberichte/2019_englisch.pdf?__blob=publicationFile&v=4), see pp. 40-46).