

CALL FOR INPUTS: GENERAL FRAMEWORK, ARCHITECTURE, AND GUIDING PRINCIPLES OF A LEGALLY BINDING INSTRUMENT ON THE HUMAN RIGHTS OF OLDER PERSONS



SUBMITTED BY

Dr Lyla Latif

Committee on Fiscal Studies, University of Nairobi

latif@uonbi.ac.ke

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Introduction

This submission is presented to the Intergovernmental Working Group (IGWG) on the Human Rights of Older Persons in advance of its first substantive session, convened pursuant to Human Rights Council Resolution A/HRC/RES/58/13 (2025). The IGWG is mandated to elaborate an internationally legally binding instrument (LBI) for the promotion, protection and full realisation of the human rights of older persons, a process that represents the culmination of more than two decades of normative advocacy and intergovernmental deliberation. The submission is structured to provide substantive analytical inputs in direct response to the three thematic questions posed

by the IGWG Secretariat concerning the overarching framework, core principles, and structural architecture of the proposed instrument.

Question 1: What overarching framework should guide the internationally legally binding instrument on the human rights of older persons? Additionally, how can it best reflect and reinforce the recognition that older persons are rights-holders entitled to the full and equal enjoyment of all human rights and fundamental freedoms?

A. The Rights-Holder Framework as the Non-Negotiable Foundation

The overarching framework of the LBI must be grounded without qualification in the recognition that older persons are rights-holders, not beneficiaries of discretionary welfare, recipients of charitable provision, or burdens upon productive society. The difference between a rights-holder and a welfare recipient is the difference between an enforceable entitlement and a governmental favour, between something the State is obliged to provide and something the State may choose to reduce, condition, or withdraw at political will. The history of social protection for older persons in the Global South, where pension adequacy has been repeatedly sacrificed to fiscal adjustment programmes and where elder care has been privatised into unpaid familial labour, demonstrates precisely why the rights-holder framing must be not merely stated but structurally embedded in the obligations architecture of the instrument.

[The Convention on the Rights of Persons with Disabilities](#) (CRPD, 2006) provides the closest normative precedent. That instrument transformed the treatment of persons with disabilities from a welfare paradigm, in which States provided assistance as a matter of social policy, to a rights paradigm, in which persons with disabilities hold enforceable entitlements, States bear positive obligations, and the persons themselves are recognised as authoritative participants in the design and review of their own rights framework. The [General Assembly's adoption of Resolution 78/324](#) in August 2024, acknowledging significant gaps in existing human rights protections for older persons and the Human Rights Council's subsequent establishment of this IGWG in April 2025, reflects precisely the same normative logic. The LBI must consolidate that logic into binding treaty language.

B. A Decolonial and Structurally Grounded Framework

The rights-holder framework, if it is to have purchase in the lived realities of older persons in the Global South, must be decolonial in its design. The existing international human rights architecture was constructed largely in the post-World War II period by states whose political economies were premised on formal wage employment, relatively robust welfare states, and demographic profiles in which the ageing of populations was an emergent rather than an urgent concern. The social protection instruments designed within that architecture, these being: contributory pension

systems, employer-linked benefit schemes, retirement savings frameworks, were transposed to post-colonial states as conditions of independence or as requirements of development finance, with limited regard for the structural conditions that would determine whether they could function as designed.

The consequences of this transposition are measurable. Within Africa, the International Labour Organisation estimates that only [17.4 per cent of the total population is effectively covered by at least one social protection benefit](#). The 4th Annual African Pensions Supervisors' Association report found that approximately [600 million of the 778 million working-age persons in Africa are excluded from formal pension and social protection arrangements](#). In sub-Saharan Africa, only [8.9 per cent of the labour force holds pension scheme coverage](#), against a global average of 53.7 per cent, and fewer than one in four elderly persons in sub-Saharan Africa receives any pension income at all. The [average annual pension payment across the continent amounts to approximately USD 354.60](#), compared to approximately USD 1,368 in Latin America and far higher figures across the OECD.

An LBI that is designed around the conditions prevailing in OECD economies will reproduce the same structural failure. The overarching framework must therefore explicitly acknowledge the structural and historical dimensions of older persons' deprivation, including the colonial inheritance of pension exclusion, the gendered organisation of labour and care, and the fiscal constraints imposed on developing states by international debt obligations and structural adjustment conditionality. This acknowledgement generates normative implications for the scope and content of State obligations, the design of international cooperation provisions, and the monitoring indicators against which compliance is assessed.

C. Older Persons as Active Agents, Not Passive Objects

The framework must also reject, structurally and rhetorically, the paternalistic treatment of older persons as passive objects of protection. Older persons are not a homogeneous category of diminished capacity. They are workers, carers, community leaders, knowledge-holders, and political actors, whose contribution to economic and social life continues long after the arbitrary threshold of pensionable age. The framework's recognition that older persons are entitled to the full and equal enjoyment of all human rights must therefore extend to the rights of participation, political agency, autonomous decision-making, and freedom from coerced institutionalisation, as well as to the economic and social rights to which this submission gives particular attention.

The UN Deputy High Commissioner for Human Rights, Nada Al-Nashif, observed at the IGWG's organisational session in February 2026 that [older persons themselves, in all their diversity, must be actively engaged in the negotiating process and that an inclusive and transparent process will](#)

[strengthen both the legitimacy and the quality of the outcome](#). The same principle must be embedded in the framework of the instrument itself: older persons must have enforceable rights to participate in the design, implementation, and review of policies and programmes that affect them, and States must be required to create the conditions in which such participation is substantive rather than procedural.

The overarching framework of the LBI should accordingly be grounded in:

- the unconditional recognition of older persons as rights-holders entitled to the full spectrum of human rights without discrimination on the basis of age;
- a structural acknowledgement of the historical and political economy forces that have produced older persons' deprivation; a commitment to substantive rather than formal equality, requiring States to take affirmative measures to address the compounded disadvantage experienced by older women, older persons with disabilities, older informal workers, older indigenous persons, and older persons in situations of poverty or conflict; and
- the integration of participation, accountability, and transparency as operational principles of the instrument's implementation framework.

Question 2: What core principles should underpin the legally binding instrument, to ensure it effectively protects the rights of older persons? In addition, how can the legally binding instrument both reaffirm existing human rights for older persons and clearly identify and address gaps where further normative development is required?

A. Core Principles

i. Non-Discrimination and Substantive Equality

Age must be established as an explicit and protected ground of discrimination under the LBI, generating the same quality of legal protection that sex, race, and disability enjoy under the core UN treaty instruments. The instrument must further require States to address intersectional discrimination seen through the compounded and mutually reinforcing disadvantages experienced by older persons who also face discrimination on the basis of gender, disability, ethnicity, socioeconomic status, or geographic location. Formal equality which is treating all older persons identically is insufficient where structural disadvantage renders identical treatment substantively unequal. The LBI must therefore mandate substantive equality measures, including targeted social protection, progressive realisation obligations benchmarked against available resources, and the prohibition of retrogression.

ii. Dignity and Autonomy

Dignity is the foundational principle of the international human rights framework and it must be articulated in the LBI not as an abstract aspiration but as a substantive standard against which the conditions of older persons' lives are assessed. Dignity in old age requires, at a minimum, access to adequate income, healthcare, housing, and social connection. The autonomy of older persons exercised through their right to make decisions about their own lives, including decisions about care, residence, financial arrangements, and end-of-life preferences must be protected against both State and private interference. [The history of institutionalised elder care in many countries, where older persons have been involuntarily confined, over-medicated, and stripped of legal personhood](#), demonstrates the critical importance of autonomy as an operative rather than merely declaratory principle.

iii. Non-Regression

The principle of non-regression, drawn from the jurisprudence of the Committee on Economic, Social and Cultural Rights under the ICESCR, must be given explicit treaty-level expression in the LBI. States must not reduce existing social protection entitlements, pension benefits, or healthcare provision for older persons in response to fiscal constraints without demonstrating that every available alternative has been exhausted and that the measure in question is strictly necessary, proportionate, and time-limited. The systematic use of austerity conditionality by international financial institutions to justify reductions in pension expenditure in developing countries constitutes, from this normative perspective, a form of structural regression against which the LBI must provide protection.

iv. Participation

The meaningful participation of older persons in all decisions affecting them, from national budget processes, to pension fund governance, to the design of algorithmic systems used in healthcare and social benefit adjudication must be an enforceable operational principle of the LBI. States must be required to create and resource institutional mechanisms through which older persons and their representative organisations can contribute to the design, monitoring, and evaluation of policies affecting them. Participation that is confined to consultation processes without decision-making power or feedback loops is a procedural courtesy, not a human rights obligation.

v. International Cooperation and Fiscal Responsibility

The LBI must affirm, as a binding principle, that international cooperation is not merely desirable but obligatory in support of the realisation of older persons' rights in developing countries with limited fiscal capacity. This includes the obligations of high-income States and international financial institutions to refrain from imposing conditionality that compels retrogression in social protection, to support capacity-building for inclusive pension design, and to contribute to the

financing of adequate social protection floors for older persons in lower-income countries. The fiscal dimension of international cooperation is not peripheral to the rights framework; it is constitutive of it.

B. Reaffirming Existing Rights and Identifying Normative Gaps

The LBI must perform two distinct normative functions simultaneously: it must reaffirm, with age-specific content, the rights already guaranteed to all persons under existing international instruments; and it must generate new, binding normative standards in domains where the existing framework contains genuine gaps that are not addressable by interpretation alone.

On reaffirmation, the LBI should expressly confirm that older persons hold all the rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and related instruments, and should provide age-specific elaboration of what those rights require in practice. For example, the ICESCR's right to social security requires, in the specific context of older persons, that pension systems are accessible to informal workers, that benefit levels are adequate to maintain a dignified standard of living, and that investment returns on accumulated contributions are governed transparently and passed through to beneficiaries.

On normative gaps, this submission identifies three domains in which the existing framework contains genuine lacunae requiring new treaty-level obligations.

- i. First, the fiscal architecture of social protection: no existing international instrument creates a binding obligation on States to extend pension coverage to informal workers, to guarantee adequacy benchmarks for pension income, or to regulate the governance of pension fund investments with enforceable transparency and fiduciary standards. [The ILO's Social Protection Floors Recommendation \(No. 202, 2012\)](#) provides important soft-law guidance, but guidance is not obligation. The LBI must close this gap by establishing binding obligations on States to ensure that all older persons have access to adequate income in old age, regardless of prior employment status or contributory history.
- ii. Second, the governance of pension fund investments and the distributive rights of beneficiaries: according to the OECD, [pension funds globally managed USD 69.8 trillion in assets at end-2024](#), achieving average nominal returns of 9.1 per cent in OECD jurisdictions and 11.7 per cent in non-OECD jurisdictions. The accumulated contributions of workers are among the largest pools of investment capital in the global financial system. Yet no international instrument requires States to ensure that workers have enforceable rights of access to information about how their contributions are managed, that investment

returns are distributed to beneficiaries in a transparent and adequate manner, or that pension fund governance meets minimum standards of fiduciary accountability and independent oversight. The LBI must establish these obligations for the first time.

- iii. Third, the gendered dimensions of pension deprivation: CEDAW addresses gender-based discrimination in general terms, but it does not specifically address the pension gap arising from the structural undervaluation of women's unpaid care work, the gender wage gap's compounding effect on contributory pension income, or the feminisation of elder poverty. [Research across 14 sub-Saharan African countries found that women's average healthy life expectancy of 57 years left them spending five years in poor health before reaching pension eligibility at age 62](#), a structural injustice that no existing instrument specifically prohibits or requires States to remedy. The LBI must address these gaps with specific, binding obligations.

Question 3: What overall structure or architecture should the legally binding instrument adopt to ensure clarity and effectiveness? For example, should it include a preamble, definitions, general principles, general obligations, specific rights, and implementation provisions?

A. On Structure Generally

The architecture of the LBI should follow the established structural conventions of the core UN human rights treaty instruments, that is, preamble, definitions, general principles, general obligations, substantive rights provisions, and implementation mechanisms while incorporating innovations drawn from more recent instruments, particularly the CRPD, that have proved effective in generating operational clarity and accountability. Each structural element of the instrument performs a distinct normative function, and the quality of the instrument's protection will depend significantly on whether each element is drafted with sufficient precision and whether the relationships between elements are coherent.

This submission recommends against a minimalist or framework approach that defers substantive standard-setting to subsequent protocols or soft-law elaboration. The history of human rights treaty implementation demonstrates that provisions drafted at a high level of abstraction are routinely interpreted in ways that minimise their practical effect, and that optional protocols, once separated from the parent instrument, attract far fewer ratifications and receive far less political attention. The LBI must be designed from the outset for maximum normative specificity and maximum accountability.

B. Preamble

The preamble should perform three functions:

- it should situate the instrument within the broader international human rights framework and affirm its complementarity with existing treaty obligations;
- it should articulate the specific harms, gaps, and forms of structural discrimination that necessitate the instrument's elaboration; and
- it should establish the instrument's normative orientation, including its recognition of the structural and historical dimensions of older persons' deprivation identified in Sections II and III above.

C. Definitions

The definitions article will be among the most contested in the negotiating process. The threshold age that triggers the LBI's special protections must be set through negotiation, but several design principles should guide that negotiation.

- First, any threshold should be sufficiently flexible to accommodate the divergent life expectancy and healthy life expectancy profiles across regions; a single universal age threshold risks either over-inclusion in high-income contexts or, more damagingly, under-inclusion in contexts where persons experience the vulnerabilities associated with old age at earlier ages.
- Second, the definition should be intersectional, recognising that the experience and onset of age-related vulnerability is mediated by gender, disability, poverty, and ethnicity.
- Third, the instrument should include a definition of ageism as a prohibited form of discrimination, drawing on the [WHO's Global Report on Ageism \(2021\)](#), and should define AI ageism as a specific form of ageism generating its own set of State obligations.

The instrument should also define the concept of adequate pension income with reference to substantive benchmarks rather than purely procedural standards. A definition that simply requires States to provide 'some' pension income without specifying adequacy criteria will not prevent the continuation of manifestly insufficient pension payments that fail to meet older persons' basic needs, healthcare costs, and the requirements of a dignified life.

D. General Principles

The general principles article should codify, with binding normative force, the principles identified in this submission (non-discrimination and substantive equality; dignity and autonomy; non-regression; meaningful participation; and international cooperation and fiscal responsibility). The general principles should be drafted as operative standards against which the interpretation of all

other provisions of the instrument is assessed, and should be explicitly linked to the monitoring and reporting obligations of the implementation section.

E. General Obligations

The general obligations article must establish a clear typology of State obligations, which is to respect, protect, and fulfil, applicable across all substantive rights provisions:

- Obligations to respect require States to refrain from interfering with the rights of older persons, including through the design or deployment of algorithmic systems that discriminate on the basis of age.
- Obligations to protect require States to regulate private actors, including pension fund managers, healthcare providers, digital platform operators, and AI developers, to prevent interference with older persons' rights.
- Obligations to fulfil require States to take positive legislative, administrative, fiscal, and other measures to realise older persons' rights, including through the extension of social protection coverage, the financing of adequate pension income, and the establishment of digital access and algorithmic accountability frameworks.

F. Specific Rights

Finally, the substantive rights chapters of the instrument should address, at minimum, the following domains:

- i. On social protection and adequate income in old age, the instrument must establish a binding right of all older persons to an adequate income in old age, irrespective of prior employment status, contributory history, gender, or geographic location. States must be required to extend coverage to informal workers, unpaid care workers, and rural and agricultural workers, through combinations of contributory and non-contributory mechanisms financed by progressive public revenues. The obligation must include a substantive adequacy standard referenced to the actual cost of a dignified life, including healthcare, housing, and nutrition.
- ii. On pension fund governance and investment accountability, the instrument must require States to ensure that pension funds holding the contributions of workers meet binding governance standards including fiduciary accountability, independent oversight, transparent reporting of investment performance and management fees, and the enforceable right of beneficiaries to access information about the management of their assets. Investment returns must be distributed to beneficiaries in a transparent, timely, and

inflation-adjusted manner. States must ensure that pension fund investment practices do not generate harms to the communities or environments in which pensioners live, consistent with the indivisibility of rights.

- iii. On gender equality in social protection, the instrument must include specific provisions requiring States to address the gendered pension gap through pension credits for periods of unpaid care work, survivor benefit schemes designed to address widowhood poverty, and progressive benefit formulae that do not entrench the gender wage gap in pension income. The gendered exclusion of women from social protection in old age must be treated as a form of gender-based discrimination that States are obliged to eliminate.
- iv. On health and long-term care, the instrument must affirm the right of older persons to the highest attainable standard of physical and mental health, with specific obligations on States to ensure that healthcare systems address the non-communicable and age-specific conditions prevalent in older populations, that long-term care is available, affordable, and respectful of older persons' autonomy and dignity, and that healthcare financing does not impose catastrophic or impoverishing expenditure on older persons or their families.
- v. **On artificial intelligence and the digital environment, the instrument must establish, for the first time in binding international law, the rights of older persons in relation to algorithmic governance. These rights include:**
 - a. **the right not to be subjected to automated decisions that discriminate on the basis of age;**
 - b. **the right to an explanation of automated decisions that adversely affect access to healthcare, financial services, employment, social protection, or public services;**
 - c. **the right of access to non-digital pathways to all essential public services; and**
 - d. **the right to digital literacy support and access to digital infrastructure. States must be required to mandate age-bias impact assessments for algorithmic systems deployed in domains affecting older persons, with ongoing monitoring, public reporting, and effective redress mechanisms.**

About the Committee on Fiscal Studies, University of Nairobi

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