



REPUBLIC OF KENYA

MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN
AFFAIRS

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

I. INTRODUCTION

1. These written inputs are submitted in response to the Call for Contributions by the Office of the United Nations High Commissioner for Human Rights, in preparation for the 1st substantive session of the Intergovernmental Working Group on the Human Rights of Older Persons, to be held from 13th to 17th July 2026.
2. The said submissions are grounded in the constitutional and statutory framework of the Republic of Kenya, regional human rights instruments applicable to Kenya and the relevant international instruments.

II. DOMESTIC LEGAL FRAMEWORK

A. The Constitution of Kenya, 2010

3. The Constitution of Kenya, 2010 is the supreme law of the Republic and provides the foundational framework within which all rights of older persons must be understood and protected.

The Bill of Rights:

4. Article 19 of the Constitution establishes that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic, and cultural policies. Significantly, Article 20(l) provides that the Bill of Rights

applies to all laws and binds all State organs and all persons.

5. Article 27 guarantees the right to equality and freedom from discrimination, expressly prohibiting discrimination on grounds including age. This provision is foundational to any discussion of older persons' rights in Kenya, as It mandates that the State and all persons treat older persons with equal dignity and without prejudice on account of their age.
6. Article 28 guarantees every person inherent dignity and the right to have that dignity respected and protected. This provision has particular resonance for older persons, who are frequently subjected to degrading treatment, neglect and marginalization.

Key Provisions for Older Persons:

7. Article 57 of the Constitution specifically addresses older members of society. It provides that the State shall take measures to ensure the rights of older persons:
 - a) to fully participate in the affairs of society;
 - b) to pursue their personal development;
 - c) to live in dignity and respect and be free from abuse: and
 - d) to receive reasonable care and assistance from the family and the State.

This Article represents a deliberate constitutional recognition that older persons are a distinct category requiring targeted protective measures. It provides clear constitutional authority for both legislative and programmatic intervention.

Socio-economic rights:

8. The Constitution of Kenya, 2010 also guarantees progressive economic and social rights that directly affect older persons *to wit*:
 - a) Article 43(1) (a): the right to the highest attainable standard of health, which includes the right to health care services...;
 - b) Article 43(1)(b): the right to accessible and adequate housing, and to reasonable standards of sanitation;
 - c) Article 43(1)(c): the right to be free from hunger and to have adequate food of acceptable quality;
 - d) Article 43(1)(d): the right to clean and safe water in adequate quantities;

e) Article 43(1) (e): the right to social security.

Article 43(3) states that the State shall provide appropriate social security to persons who are unable to support themselves and their dependants. This provision is directly applicable to older persons who, due to age, illness, or lack of pension, are unable to meet their basic needs.

Non-retrogression and progressive realisation:

9. Article 20(5) requires that in applying any right under Article 43, if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the principles outlined in the said provision *to wit*:

(a) it is the responsibility of the State to show that the resources are not available;

(b) in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and

(c) the court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

This Article, read together with Article 21(2) which obligates every State organ to observe, respect, protect, promote and fulfil the rights in the Bill of Rights, provides a dynamic and rights-expanding framework for older persons' rights in Kenya.

B. The Statutory Framework

The Persons with Disabilities Act No. 4 of 2025:

10. The Persons with Disabilities Act No. 4 of 2025, which was enacted into law on 8th May 2025, repealed the outdated Persons with Disabilities Act No. 14 of 2003. The new Act gives effect to Article 54 of the Constitution of Kenya and further aligns with the UN Convention on the Rights of Persons with Disabilities, adopting a rights-based framework. Notably for these

submissions, section 13 of the Act specifically addresses older members of society with disability, recognising the intersection of age and disability as a distinct category warranting specific protection. Other relevant provisions include:

- i. section 7: The right to legal capacity for persons with disabilities on an equal basis with others;
- ii. section 15: The right to physical and mental integrity;
- iii. section 16: The right to human dignity;
- iv. section 17: Protection from abuse, exploitation and violence.

The Act's adoption of supported decision-making principles and its recognition of older members of society with disability as a distinct protected category provide important domestic precedents for the proposed legally binding instrument.

The Social Protection Act, No. 12 of 2025:

11. The Social Protection Act No. 12 of 2025, which was enacted into law on 30th July 2026, repealed the Social Assistance Act (Cap. 258A) Laws of Kenya. It is the primary statutory instrument governing non-contributory social protection interventions in Kenya.
12. This Act is directly relevant to the rights of older persons in Kenya. Key provisions include:
 - i. section 2: defines older member of society as a person who has attained the age of sixty years, hence, establishing the 60-year threshold as the operative legal definition in Kenya's social protection framework;
 - ii. section 2: defines caregiver to include persons tending to those with limitations including ageing, hence, recognising the caregiving burden in the older persons context;
 - iii. section 5: guiding principles including equity, social justice, non-discrimination, rights-based approach and a life-cycle approach to social protection;
 - iv. section 8: functions of the Board including the provision of social assistance and social care to vulnerable persons, and the

establishment of a social protection registry with disaggregated data;

- v. section 10(f) (iv): mandates that one older member of society, nominated by organisations of older members of society, sit on the National Board for Social Protection, hence, an important participatory mechanism;
- vi. section 29: Social protection benefits including cash transfers, transfers in kind, rehabilitation services, psychosocial support, respite care, feeding programmes, homebased care, provision of essential drugs, personal care goods, and assistive devices;
- vii. section 30: eligibility criteria for social protection benefits, including older members of society living below prescribed income thresholds or having a chronic progressive condition or disability.

The National Social Security Fund Act (Cap.258) (NSSF Act):

- 13. The NSSF Act establishes the contributory pension framework for formal sector workers. It is directly relevant to older persons' economic security, providing pension and provident fund benefits upon retirement.

The Sexual Offences Act (Cap.63A) and the Protection Against Domestic Violence Act (Cap.151)

- 14. These statutes provide important protections against gender-based violence affecting older women. Older women in Kenya may face a risk of sexual violence, domestic abuse and property dispossession upon widowhood.

The Land Act (Cap.280) and the Land Registration Act (Cap.300)

- 15. In certain instances, land tenure insecurity pose a critical issue for older persons in Kenya, particularly older widows who may face customary and formal legal barriers to land ownership and inheritance. The Land Act provides a gender-neutral framework for land rights in Kenya.

The Older Persons Bill, 2026 (pending Legislation)

16. Kenya does not yet have a dedicated statute on the rights of older persons. The Older Persons Bill has been developed by the Ministry of Labour and Social Protection and has undergone public participation. The same is currently at the Office of the Attorney General for approval prior to submission to the Cabinet for consideration and eventual transmission to Parliament for enactment into law.
17. The Bill, if enacted, will represent the most comprehensive statutory framework for the protection of older persons in Kenya's legislative history. Its proposed provisions include:
- i. support services and community-based programmes for older persons;
 - ii. protections against elder abuse, including physical, psychological, financial and sexual abuse, with penal sanctions;
 - iii. standards for care institutions serving older persons;
 - iv. opportunities for the social, physical, mental and emotional well-being of older persons;

The elaboration of an international legally binding instrument would provide powerful external impetus for Kenya to complete and enact this legislation.

The National Policy on Older Persons and Ageing

18. While Policy is not a statutory instrument in the strict sense of the term, and in the absence of enacted legislation on older persons, the National Policy on Older Persons and Ageing remains the primary policy instrument governing State action on older persons' welfare. Developed pursuant to Article 57 of the Constitution of Kenya, 2010, the policy addresses ten thematic areas including social protection, health, housing, education, and protection from abuse. The policy's guiding principles *to wit*: human dignity, equity and social justice, inclusiveness, equality, and a human rights approach, are broadly consistent with the normative framework proposed for the legally binding instrument.

III. REGIONAL HUMAN RIGHTS FRAMEWORK

The African Charter on Human and Peoples' Rights (Banjul Charter), 1981

19. Kenya is a State Party to the African Charter on Human and Peoples' Rights. Article 18(4) of the Charter requires States to ensure the protection of the rights of the aged and the disabled. This provision, while brief, establishes a regional obligation directly applicable to Kenya.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women In Africa (Maputo Protocol), 2003

20. Kenya ratified the Maputo Protocol in 2010. The Protocol addresses elderly women in Article 22, which requires State parties to take specific measures to protect the rights of elderly women. Given the particularly vulnerability of older women in Kenya, including risks of widowhood dispossession, accusations of witchcraft, and exclusion from decision-making in some instances, the Maputo Protocol is directly relevant to Kenya's engagement with the proposed legally binding instrument.

The African Union Policy Framework and Plan of Action on Ageing (2002)

21. This policy framework guides member states on how to design, implement and evaluate national policies and programmes that meet the needs of older persons in Africa. It further makes recommendations to members states to:

- i. recognize the fundamental rights of older persons and commit to abolish all forms of discrimination based on age;
- ii. undertake necessary measures to ensure older persons access their rights;
- iii. collect data on older victims of crime and abuse disaggregated by gender and age and recommend appropriate actions and measures for protection;
- iv. enlighten the general populace to change attitudes that deny older persons access to essential services;

- v. enact legislations that ensure health workers do not discriminate older persons;
- vi. create nutrition education programmes that ensure equitable consideration to the needs of older persons;
- vii. develop land distribution policies that do not discriminate older persons and older women have right to land ownership irrespective of their marital status;
- viii. develop and implement practical and realistic social welfare measures that promote community care and protection and that emphasize their independence;
- ix. enact legislations that prevents discrimination on the basis of older age in recruitment, promotion and retrenchment processes and also strategies and opportunities for them to remain in work and employment as long as they are able;
- x. enact legislations that provide assistance to older persons and that protect their rights during crises and emergencies and their needs are met during such situations; and
- xi. establish programmes that ensure participation of older persons and programmes and address negative attitudes that exist about older persons.

22. While not a legally binding instrument, this framework has guided Kenya's policy responses to ageing and provides relevant normative standards that should inform the content of the proposed legally binding instrument.

The Protocol to the African Charter on the Rights of Older Persons In Africa.

23. Kenya ratified the Protocol in 2022. The Protocol in Article 2, obligates State parties to recognise the rights and freedoms enshrined in the Protocol and to undertake legislative or other measures to give effect to them.

IV. EXISTING INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

A. Core UN Human Rights Treaties

24. Kenya is a State Party to the following international instruments, all of which contain provisions relevant to older persons:

International Covenant on Civil and Political Rights (ICCPR), 1966

Articles 2, 6, 7, 9, 17, and 26 are directly applicable to older persons' rights, including the right to life, freedom from torture, liberty and security of person, privacy, and equality before the law.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

The ICESCR is the most directly relevant existing treaty instrument for older persons' socio-economic rights. Key provisions include Articles 9 on right to social security, 11 on right to adequate standard of living, and 12 on right to health.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

CEDAW's General Recommendation No. 27 (2010) specifically addresses older women, recognising the intersectional discrimination they face on grounds of both sex and age. Kenya is obligated to implement this recommendation.

Convention on the Rights of Persons with Disabilities (CRPD), 2006

Many older persons acquire disabilities in old age. The CRPD provides a contemporary rights-based model for disability that is directly applicable to older persons with age-related impairments. The social model of disability embedded in the CRPD, emphasising barriers rather than impairments, offers a template for the proposed legally binding instrument.

B. Soft Law Instruments

25. The following instruments, while not binding, represent significant normative development:

The United Nations Principles for Older Persons, 1991 which establishes principles of independence, participation, care, self-fulfillment and dignity;

The Madrid International Plan of Action on Ageing (MIPAA), 2002 which provides a comprehensive policy framework for ageing. This framework has offered priority direction in the development of Kenya's policy intervention on older persons and ageing. MIPAA's first priority direction addresses older persons and development, the second priority direction addresses advancing health and wellbeing into old age and the third priority direction addresses ensuring enabling and supportive environments;

The Vienna International Plan of Action on Aging 1982 which guides that the formulation and implementation of policies on aging are the sovereign right and responsibility of each State, to be carried out on the basis of its specific national needs and objectives; and

The Open-Ended Working Group on Ageing (OEWGA) reports and compilations of existing international standards.

While these instruments represent important milestones, they collectively demonstrate the persistent normative and implementation gap that necessitates a legally binding instrument.

V. SUBSTANTIVE INPUTS TO THE THREE QUESTIONS

QUESTION 1: Overarching framework and the recognition of older persons as rights-holders

Affirmation of a rights-based approach:

26. We submit that the legally binding instrument must be anchored clearly in a comprehensive, interdependent and interrelated human rights framework. The instrument must recognise older persons as rights-holders, not passive recipients of welfare, and reinforce their entitlement to the full and equal enjoyment of all human rights and freedoms.
27. This rights-based framing is already embedded in the Constitution of Kenya 2010, which treats older persons as rights-holders under Article 57, while

guaranteeing them the full set of rights in the Bill of Rights. Thus, the legally binding instrument should similarly affirm that age does not diminish personhood or the entitlement to rights.

Human dignity as the foundational value:

28. Article 28 of the Constitution of Kenya, 2010 recognises the inherent dignity of every person. The legally binding instrument must place human dignity at its absolute centre as both the foundational value and the thread that runs through every substantive provision. The experiences of older persons, which includes subjection to witchcraft accusations, elder abuse and abandonment, demonstrate that dignity violations against older persons are often systemic and culturally condoned. Hence, the legally binding instrument must explicitly address this dimension.

Intersectionality and multiple discrimination:

29. The legally binding instrument must adopt an intersectional approach that recognises that older persons are not a homogeneous group. In Kenya, vulnerability is compounded by intersecting factors including gender, disability, poverty, geography and harmful cultural practices such as witchcraft.
30. Thus, we submit that the legally binding instrument expressly provide that States shall adopt measures to address the specific vulnerabilities arising from these intersecting forms of discrimination, including through targeted affirmative measures.

The right to autonomy and self-determination:

31. The legally binding instrument must affirm the right of older persons to make decisions about their own lives, including decisions about living arrangements, healthcare, financial matters and personal relationships. The legally binding Instrument should consider the CRPD's concept of supported decision-making as an alternative to substituted decision-making.

Non-retrogression and progressive realisation:

32. We submit that the legally binding instrument consider incorporating a dual obligation, that is, the immediate application of civil and political rights, and the progressive realisation of economic, social and cultural rights. with explicit non-retrogression obligations. This structure is consistent with the ICESCR framework and with the constitutional framework of Kenya under Articles 21 and 43.

QUESTION 2: Core Principles to underpin the legally binding Instrument, Reaffirmation of existing rights and Identification of gaps requiring normative development:

A. Core Principles to underpin the legally binding Instrument:

33. We submit that the following core principles should underpin the legally binding instrument:
- i. Non-discrimination and equality: A comprehensive prohibition on discrimination on grounds of age, whether direct or indirect, in all spheres of life, consistent with Article 27 of the Constitution of Kenya;
 - ii. Human dignity: As demonstrated above under paragraph 28 in response to question 1, the legally binding instrument must recognise inherent human dignity as foundational;
 - iii. Protection and Participation: The right of older persons to meaningfully participate in political, social, cultural and economic life, and be free from abuse, consistent with Article 57 of the Constitution of Kenya;
 - iv. Socio-economic rights and social security: It must guarantee access to health care, housing, food, water and social security, as outlined in Article 43 of the Constitution of Kenya. Importantly, it should also address gaps in contributory pension coverage. This principle ensures older persons are not left destitute due to structural economic exclusions;
 - v. Access to Justice: The right of older persons to access justice, including specialised legal aid, priority case handling and accessible court processes;

- vi. **Accountability:** Clear and enforceable obligations on States, with monitoring mechanisms including periodic reporting, independent expert oversight, and a complaints mechanism:
- vii. **Intersectionality and vulnerability:** As discussed above under paragraph 29 in response to question I, the legally binding instrument must recognise the compounded vulnerabilities faced by older women, older persons with disabilities as well as those experiencing poverty or land insecurity; and
- viii. **Coherence:** The legally binding instrument must reaffirm and build upon existing international human rights standards rather than creating parallel or contradictory obligations.

B. Reaffirmation of existing rights In the context of older persons:

34. The legally binding instrument must systematically reaffirm the application of all established human rights to older persons, with specific elaboration of their content in the older-persons context. This includes:
- i. The right to life with dignity, including the right to die with dignity and access;
 - ii. The right to health, including accessible, affordable, age-appropriate, and culturally sensitive healthcare;
 - iii. The right to social security and an adequate standard of living, including the right to social protection for those in need;
 - iv. The right to education and access to information, including digital literacy and access to emerging technologies;
 - v. The right to freedom from violence, abuse, neglect and exploitation, including elder abuse in domestic and institutional settings;
 - vi. The right to liberty and security of person, including protection against arbitrary institutionalisation;
 - vii. The right to privacy and data protection, with particular attention to the misuse of health and financial data of older persons.

C. Gaps requiring normative development In the legally binding Instrument:

35. Based on Kenya's domestic experience and existing international standards, the following critical normative gaps are identified:

I. Gap 1: Long-term care:

There is no binding international instrument establishing the right of older persons to long-term care. In Kenya, older persons who require long-term or continuous care depend almost entirely on family members or informal arrangements. The legally binding instrument must establish State obligations to develop, regulate and fund accessible long-term care systems, with core standards for care quality, worker training and prevention of abuse in care settings.

II. Gap 2: Legal capacity and supported decision-making:

Existing instruments inadequately address the specific challenges of older persons with cognitive decline including dementia. The legally binding instrument must provide detailed provisions on the right to legal capacity, the prohibition of unjustified guardianship regimes and the obligation of States to provide supported decision-making arrangements consistent with the CRPD model adapted to the older persons context.

III. Gap 3: Protection from elder abuse:

While elder abuse is referenced in soft law instruments, no binding instrument establishes comprehensive obligations on States to prevent, criminalise, investigate and remedy elder abuse. The legally binding instrument must define elder abuse comprehensively and obligate States to adopt specific legislative, administrative and programmatic measures to address it.

IV. Gap 4: Harmful cultural practices targeting older persons:

The legally binding instrument must specifically address harmful cultural and traditional practices that target older persons, including the accusation of older persons of witchcraft or similar supernatural wrongdoing. This practice results in serious physical violence, property dispossession, social exclusion and killing of older persons. No existing binding international instrument addresses this practice directly in the older persons context.

v. **Gap 5: Digital rights and the right to non-discrimination In the digital sphere:**

Older persons in Kenya and globally face systematic exclusion from digital services, including a-government services and digital financial services. As digitisation accelerates, this exclusion risks deepening older persons' marginalisation. The legally binding instrument must address digital accessibility, the obligation of States to provide accessible digital services and the prohibition of age-based digital discrimination.

vi. **Gap 6: Pension and Social Protection as a Right:**

Existing instruments inadequately establish a justiciable right to social protection in old age. The legally binding instrument must establish clear minimum core obligations regarding social protection in old age.

QUESTION 3: Overall structure and architecture of the legally binding Instrument:

Preferred architecture:

36. It is proposed that the legally binding instrument should adopt a comprehensive and treaty-based architecture similar to the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC), as it is noted that these instruments represent the most contemporary models of human rights treaty-making. The instrument should include the following structural components:

- i. **Preamble:** affirming the equal and absolute dignity of all members of the human family; recognising the contribution of older persons to society; acknowledging the demographic reality of global ageing; reaffirming all existing human rights obligations as fully applicable to older persons; and recognising the normative gap that necessitates the legally binding instrument.
- ii. **Definitions:** definitions of *older person* including but not limited to definitions of: *age-based discrimination; elder abuse; long-term care; supported decision-making; reasonable accommodation; and harmful cultural practices.*
- iii. **General Principles:** non-discrimination; equality; dignity; autonomy and self-determination; full and effective participation; respect for inherent worth; accessibility; and intergenerational solidarity.

- iv. **General Obligations:** immediate obligations (including non-discrimination and access to justice) and obligations of progressive realisation with non-retrogression safeguards; obligations to adopt legislative, administrative, judicial, and other measures; obligations to collect disaggregated data on older persons; obligations to ensure budgetary allocation; and obligations of international cooperation.
- v. **Specific Rights:** a comprehensive catalogue of rights elaborated in the older persons context, including but not limited to: equality and non-discrimination; life and personal integrity; liberty and security; freedom from torture and ill-treatment; privacy; legal capacity; access to justice; freedom of expression and opinion; participation in public and political life; education; health; long-term care; social protection; adequate standard of living; work; housing; cultural rights; and freedom from all forms of violence.
- vi. **Implementation Provisions:** establishment of a Committee on the Rights of Older Persons; periodic State reporting obligations; a communications (individual complaints) procedure; an inquiry procedure; and optional protocols as appropriate.

Specific Structural Recommendations:

37. We make the following specific recommendations regarding the structure of the legally binding instrument:
- i. The definition of *older person* should be fixed at 60 years of age, without prejudice to States adopting lower thresholds in their domestic law;
 - ii. The instrument should adopt a dual model of obligations: immediate and progressive, with explicit acknowledgement that core minimum obligations apply immediately regardless of available resources;
 - iii. The instrument should include a standalone article on intersectional discrimination, recognising that the combination of age with gender, disability, poverty, indigenous status and other grounds creates heightened vulnerability requiring targeted responses;
 - iv. The instrument should include a specific article on older women, consistent with the model of Article 6 of the CRPD, recognising the compounded discrimination faced by older women;

- v. The instrument should establish a strong monitoring mechanism including a Committee with competence to receive individual communications, conduct country visits, and issue general comments;
- vi. The instrument should include provisions on international cooperation and technical assistance to support developing States in meeting their obligations;
- vii. The preamble should recognise the role of civil society, including organisations representing older persons, in monitoring implementation.

Coherence with existing Instruments:

38. The legally binding instrument must be designed in consistency with existing International human rights instruments. It should not lower any existing standards or create interpretive ambiguity regarding the application of existing treaties to older persons. The Committee on the Rights of Older Persons, as proposed above, should be mandated to engage in cross-treaty dialogue and develop harmonised interpretations with existing treaty bodies.

VI. CONCLUSION AND RECOMMENDATIONS

39. We support the elaboration of a comprehensive, legally binding international instrument on the human rights of older persons. The existing normative framework, while providing a partial foundation, is manifestly insufficient to address the scale and severity of human rights challenges facing older persons globally, including in Kenya.

40. These submissions have demonstrated that:

- i. Kenya's constitutional and statutory framework provides strong domestic foundations consistent with the objectives of the proposed legally binding instrument;
- ii. Significant normative gaps remain unaddressed by existing international Instruments, including in respect of long-term care, legal

capacity, elder abuse, harmful cultural practices, digital rights and social protection:

- iii. The legally binding instrument should adopt a CRPD-inspired architecture with a comprehensive bill of rights, strong general obligations, intersectional provisions and a strong monitoring mechanism:
- iv. The legally binding instrument must address the specific situation of older persons particularly older women and older persons with disabilities.



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