

Main elements of a new legal international instrument to promote and respect the rights and dignity of older persons

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This submission looks at the following main elements of a new legal international instrument to promote and respect the rights and dignity of older persons:

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1. Objective of a new legal international instrument

The key objective of a new legal instrument to promote and respect the rights and dignity of older persons [hereafter the new instrument] would be to provide a comprehensive and systematic framework for the protection and promotion of the human rights of all older women and men.

To do this it must:

- Recognise that people face unique challenges and barriers to the full enjoyment of their rights on the basis of old age.
- Prohibit discrimination on the basis of old age whilst allowing for special measures or positive action to ensure equality in practice.
- Reaffirm that older people have rights on an equal basis with other people.
- Complement existing international human rights treaties and not dilute existing standards in any way.
- Recognise the interdependence and indivisibility of all human rights.
- Express the content of each right as it specifically applies to older people and in old age.

- Articulate States Parties' human rights obligations and legal duties to older people.
- Outline measures that States Parties must take to respect, protect and fulfil the human rights of older people.
- Identify areas of rights where special measures need to be made and where protection must be reinforced so that older people can exercise their rights on an equal basis with others.
- Commit States Parties to the collection, disaggregation, analysis and dissemination of data by age and sex, throughout life for all ages, up to and over the age of 100.
- Provide for the establishment of national implementation bodies.
- Provide for the establishment of independent monitoring mechanisms at the international and national levels, including individual complaints mechanisms.
- Recognise the importance of international co-operation, including international development programmes, in the implementation of its provisions.
- Prohibit all reservations, and any statement that modifies the legal effect of the treaty in its application to the State or removes supportive guarantees.

2. Purpose of a new legal international instrument

The purpose of a new instrument must be to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all older women and men, and to promote respect for their inherent dignity.

In describing the purpose, in which situations, and to whom the new instrument applies, it must:

- Recognise and provide for the fact that ageing is a natural and universal experience.
- Recognise and provide for the fact that people experience old age and ageing differently.
- Recognise that the social construction of old age and what it is to be an older person can vary across different social, religious or cultural contexts.
- Recognise that as populations age, the social construction of old age and what it is to be an older person will change and evolve.
- Recognise that ageism, namely negative attitudes towards and stereotyping of older people and old age, is prevalent in all societies, is often based on social constructions of old age, and results in prejudice, discrimination and the violation of the rights of older people.
- Recognise that it is the legal, social, institutional and other barriers that older people face that perpetuate discrimination and violation of their rights.

3. General Principles

General principles underpinning a new instrument should include, but not necessarily be limited to:

- a) Respect for the inherent dignity of all people, including older people
- b) Non-discrimination
- c) Independence
- d) Autonomy
- e) Full and effective participation and inclusion in society
- f) Equality, including gender equality
- g) Personal development
- h) Intergenerational equity
- i) A life course approach

4. General Obligations

A new instrument must articulate States Parties' general human rights obligations, including but not limited to:

- Adopting all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the instrument.
- Taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against older people based upon age, race, sex, disability, religion, political opinion, language, national ethnic or indigenous origin, sexual orientation, socio-economic position, marital status, or any other condition or status.
- Taking into account the protection and promotion of the human rights of older people in all policies and programmes.
- Refraining from engaging in any act or practice that is inconsistent with the rights contained in the instrument.
- Ensuring that third parties, for example, private sector contractors, act in conformity with the rights contained in the instrument.
- Taking all appropriate measures to eliminate discrimination on the basis of old age by any person, organization or private enterprise.
- Undertaking or promoting research and development on ageing and on issues particularly affecting older people, and to ensure data is collected, disaggregated, analysed and disseminated for all ages up to and over 100.
- Providing accessible, appropriate information to older people on their rights, benefits and resources.
- Taking all appropriate measures to ensure older people's participation in society and decision-making processes.
- Developing policies and taking all appropriate measures, including awareness campaigns, to combat ageist attitudes and promote intergenerational cooperation and positive images of ageing, encourage the dignified and respectful treatment of older people, and recognize and support the contributions of older people.

5. Key areas of rights

Any new instrument must reaffirm and guarantee the rights that people have in old age on an equal basis with others. It must articulate how each right specifically applies in the context of old age and to an older person, and what measures States Parties need to take to respect, protect and fulfil each right.

The following rights, inter alia, must be guaranteed in a new instrument:

Prohibition of discrimination on the basis of old age

Any new instrument must recognise that all people of any age are equal before and under the law and are entitled without any discrimination to equal protection and equal benefit of the law. It must prohibit and guarantee effective legal protection against all forms of discrimination against older people in all aspects of their lives, including direct discrimination, indirect discrimination, discrimination by association and discrimination based on perception.

It must recognise that discrimination can be cumulative across the life course. This accumulation of discrimination can have a serious impact in itself and can be further exacerbated by additional discrimination on the basis of old age.

Any new instrument must guarantee effective legal protections against multiple discrimination in old age i.e. when discrimination is based on two or more characteristics, for example old age in combination with sex, disability, national ethnic, minority or indigenous origin, marital and family status, literacy, sexual orientation and gender identity, health status including living with dementia, migrant or refugee status, socio-economic status, or any other condition or status. Any new instrument must recognise and provide for the particular human rights challenges and multiple discrimination that older women are subjected to.

Any new instrument must recognise particular contexts and situations where older people, are particularly marginalised and subject to discrimination and violation of their rights, including those where older people are subject to a higher degree of state control. This includes, but is not limited to, older people in detention or prison, older people in situations of emergency, humanitarian disaster, armed conflict or displacement and older people in care facilities or receiving care at home.

Any new instrument must provide for special measures, reasonable accommodation and positive action to ensure equality and non-discrimination of older people in practice.

Right to life

Any new instrument must reaffirm and guarantee the right to life¹ for older people, recognising that the non-consensual, arbitrary or discriminatory denial or rationing of health and other services, support or food and water to older people can be life threatening and a violation of this right.

¹ International Covenant on Civil and Political Rights, Article 6

Any new instrument should articulate how the right to life specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- prevention of the non-consensual, arbitrary or discriminatory denial or rationing of health and other services, support or food and water to older people which may be life threatening;
- regulation, monitoring and enforcement of standards of support services for older people in long-term care settings or in prison.

Right to health

Any new instrument must reaffirm and guarantee the right of all older people to the right to health² via a continuum of health service options which deliver appropriate primary, secondary and tertiary healthcare integrated with a continuum of community and formal and informal support services.

Any new instrument should articulate how the right to health specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- accessible, available, acceptable and affordable quality physical, mental and cognitive health services, including access to essential drugs and controlled medicines;
- geriatric, dementia and palliative care training of healthcare workers;
- inclusion of older people in policies and programmes aimed at preventing, diagnosing and treating infectious disease, including the areas of sexual health and HIV and AIDS, that take into account underlying health conditions and drug interactions;
- non-discriminatory allocation and prioritization of health resources;
- available, accessible and affordable palliative care services of good quality for with incurable illnesses and their families;
- older people are offered choices, and can make decisions upon free consent, and through advance planning, about pain relief, accepting or refusing treatment, and location of death;
- multi-disciplinary strategies to prevent and provide redress for abuse within health care settings;
- non-discrimination in availability and cost of health insurance as well as the covered age-related chronic conditions;
- rehabilitation;
- special programmes tailored to the physical and mental health needs of older women.

² International Covenant on Economic, Social and Cultural Rights, Article 12

Right to support services for independent living and being included in the community

Any new instrument must reaffirm and guarantee the rights of older people to support services³ for independent living and outline effective and appropriate measures necessary to facilitate full enjoyment of this right, inter alia:

- support for independent living and full inclusion and participation in the community;
- choice of, and access to, a range of options for where and with whom they live which support their ability to live independently;
- support in decision making about their support services and the opportunity to provide advance instructions;
- non-discriminatory access to health and continuing support services in the least restrictive setting;
- health and continuing support services adapted to personal requirements and sensitive to cultural, religious, gender, language and other factors;
- laws, policies and procedures to protect older people from abuse and neglect;
- regulation and minimum standards for quality support services;
- complaint and redress mechanisms for older people to seek redress for practices that restrict liberty and autonomy or in situations where violations occur;
- policies to address public and private financing of continuing support services;
- provision of palliative care by support service providers;
- respect for rights to privacy and respect for family and personal relationships in design and delivery of support services;
- opportunities to participate in social and cultural activities;
- inclusion in national and community disaster risk management policies;
- provision of training, support, and respite to formal and informal support service providers.

Freedom from torture or cruel, inhuman or degrading treatment or punishment

Any new instrument must reaffirm and guarantee older people this right⁴ on an equal basis with others, recognising that abuse and maltreatment of older people, including in settings where they are detained or receive support, services or care, can reach the threshold of torture, inhuman or degrading treatment.

Any new instrument should articulate how the right to freedom from torture or cruel, inhuman or degrading treatment or punishment specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- policies and standards that protect older people, including older prisoners and older people receiving support, services and care, from neglect and abuse and the use of physical, chemical or environmental restraints unless necessary to prevent imminent harm;

³ See the Convention on the Rights of People with Disabilities, Article 19

⁴ International Covenant on Civil and Political Rights, Article 7

- protection against unnecessary suffering due to failure to adequately treat pain and other symptoms.

Freedom from violence and abuse

Any new instrument must reaffirm and guarantee the right of older people to be free of all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, abandonment, mistreatment or exploitation, including financial exploitation, whether perpetrated by people in a position of trust or by others.⁵

Any new instrument should articulate how the right to freedom from violence and abuse specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- the legal criminalisation of all forms of abuse and exploitation of older people;
- multi-sectoral policies to prevent all forms of abuse;
- investigation and where appropriate prosecution of all forms of violence and abuse;
- training of support service providers in how to recognise and respond to abuse and exploitation of older people;
- training of health care workers, social workers and other professionals in how to recognise and respond to abuse and exploitation of older people;
- awareness campaigns targeted at older people and the general public;
- legislation requiring the reporting of suspected abuse or neglect to a designated agency;
- victim support services;
- regulatory frameworks for care, support and service provision to prevent and respond to abuse, exploitation or neglect of residents;
- the elimination of harmful traditions practices that result in violence and abuse including accusations of witchcraft and widow inheritance;
- research on causes, incidence, prevalence and prevention strategies.

Right to work

Any new instrument must reaffirm and guarantee older people's right to work⁶ on an equal basis with others.

Any new instrument should articulate how the right to work specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- prohibition of discrimination on the basis of age in all matters of employment, including recruitment, hiring, employment, continuance of employment, access to public work schemes, career advancement, retirement policies and safe and healthy working conditions;
- decent, just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

⁵ See Convention on the Rights of the Child, Article 19

⁶ International Covenant on Economic, Social and Cultural Rights, Articles 7 and 8

- exercise of labour and trade union rights;
- access to general, technical and vocational training and guidance;
- promotion of employment opportunities in the labour market including assistance in locating, obtaining, maintaining and returning to employment;
- promotion of opportunities for older people for self-employment and entrepreneurship, including non-discrimination in access to micro-finance;
- appropriate and effective measures to protect the rights of older people working in the informal sector;
- reasonable accommodation for older people in the workplace;
- policies to extend employability, such as flexible retirement, innovative work arrangements, adaptive work environments and vocational training;
- protection from slavery, servitude, forced or compulsory labour.

Right to an adequate standard of living

Any new instrument must reaffirm and guarantee the right of older people to an adequate standard of living⁷ for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Any new instrument should articulate how the right to an adequate standard of living specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- access to public housing, subsidy and land programmes which take into account the specific requirements of older people, including those who are frail or caring for younger family members of others;
- adequate housing in situations of crisis, displacement, emergencies and evictions;
- access to safe and sufficient water and to affordable public utility and sanitation services;
- access to food that is adequate, available, accessible and nutritionally appropriate;
- non-discriminatory access to policies, programmes and technologies providing assets and support for food production;
- policies to enable older people on fixed incomes cope with food price volatility;
- access to poverty reduction and social protection programmes.

Right to social security

Any new instrument must reaffirm and guarantee the right of all older people to social security⁸.

Any new instrument should articulate how the right to social security specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

⁷ International Covenant on Economic, Social and Cultural Rights, Article 11

⁸ International Covenant on Economic, Social and Cultural Rights, Article 9

- the autonomous access of every older person to an adequate, guaranteed minimum income in old age;
- autonomy to use the income from social security schemes unconditionally;
- the administration and monitoring of social security schemes in line with international human rights standards;
- procedures for complaint and appeal;
- access to information about eligibility for schemes;
- support in application processes including for those without identity documentation;
- equitable access for older women;
- safeguarding of pension funds.

Right to education

Any new instrument must reaffirm and guarantee the right of older people to education on an equal basis with others⁹.

Any new instrument should articulate how the right to education specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- non-discriminatory access to opportunities for tertiary education, vocational training and retraining, adult education, lifelong learning and skills training in literacy, numeracy and technological competencies;
- recognition of the traditional and contemporary roles of older people as repositories of knowledge, skills and culture;
- the intergenerational transmission of knowledge.

Right to property and inheritance

Any new instrument must reaffirm and guarantee older people's right to own, dispose of and inherit property and to participate in land reform without discrimination based on old age, marital status, sex or status as a widow or widower¹⁰.

Any new instrument should articulate how the right to property and inheritance specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- the inheritance and property ownership rights of older people;
- the elimination of traditional widowhood practices which deprive older women of property and inheritance rights;
- upon the death of a spouse the right of a widow or widower to equitable inheritance of matrimonial property and to reside in the matrimonial home including upon the event of remarriage;

⁹ International Covenant on Economic, Social and Cultural Rights, Article 13

¹⁰ Universal Declaration of Human Rights, Article 17

- control of their own financial affairs and equitable access of older people to legal and financial, including bank loans, mortgages and other forms of financial credit, to ensure they are not arbitrarily deprived of their property.

Right to equal recognition before the law and legal capacity

Any new instrument must reaffirm and guarantee the legal capacity of older people in all aspects of their lives¹¹ .

It must also reaffirm and guarantee the right of older people to equal recognition before the law and recognise that older people enjoy legal capacity on an equal basis with others in all aspects of life including, inter alia, decisions about their health care, where they reside, who they live with, whether they are economically active, the use and control of their income and assets, and how they participate in family, social and civic life.

Any new instrument should articulate how the right to recognition before the law and legal capacity specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- access to the support they may require in exercising their legal capacity, and their right to choose this support;
- appropriate and effective safeguards in line with international human rights law to prevent abuse in all measures relating to the exercise of legal capacity;
- measures related to legal capacity respect the rights, will and preferences of the older person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, are the least restrictive possible, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body;
- safeguards be proportional to the degree to which such measures affect the older person's rights and interests;
- effective access to justice including through special measures to prevent unnecessary delay in the legal process;
- training on ageing and disability for those working in the administration of justice, including the police and prison staff.

Rights to participation, association and the benefits of scientific progress

Any new instrument must reaffirm and guarantee older people's right to fully participate in political life and public affairs¹², including their rights to vote, be elected and participate in the formulation of policies that impact on their lives. It must also

¹¹ International Covenant on Civil and Political Rights, Articles 16 and 26. See also Articles 12 and 13 of the Convention on the Rights of People with Disabilities

¹² International Covenant on Civil and Political Rights, Article 25

guarantee older people's rights to association¹³ and participation in recreational and cultural activities¹⁴, and to enjoy the benefits of scientific progress¹⁵.

Any new instrument should articulate how the rights to participation, association and the benefits of scientific progress specifically apply to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- voting procedures, facilities and materials that are appropriate, accessible, and easy to understand, and accommodate any special requirements of older voters;
- access to activities which facilitate active ageing and intergenerational cooperation and address social exclusion for older people including those in rural areas and those in long-term care;
- the formation by older people of organizations for all purposes including, inter alia, political, public, cultural or religious.

Right to liberty and security of person

Any new instrument must reaffirm and guarantee older people's right to liberty and security of person¹⁶ and that they are not deprived of their liberty unlawfully or arbitrarily, that any deprivation of liberty is in conformity with the law, and age shall in no case justify a deprivation of liberty.

It must also guarantee that the rights of older people in detention, prison, or who are deprived of their liberty through any process, are respected and guaranteed in accordance with international human rights law.

Any new instrument should articulate how the right to liberty and security of person specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- effective access to justice for any older person deprived of their liberty including through special measures to prevent unnecessary delay in the legal process;
- appropriate policies with regard to the built environment and facilities, programs and activities, healthcare and preparation for release of older prisoners;
- training for those supervising or providing support services for older prisoners;
- older prisoners' access to legal services;
- adjustment of disciplinary procedures to reflect the diminished culpability of older prisoners with impaired cognitive capacity;
- non-discriminatory access to paid work opportunities and to programmes related to early release;
- age-appropriate educational and recreational opportunities for older prisoners;
- provision of appropriate health care services for older prisoners;
- the safety of older prisoners who may be vulnerable to victimization;
- consideration of compassionate release for older prisoners in need of intensive support services.

¹³ International Covenant on Civil and Political Rights, Article 22

¹⁴ International Covenant on Civil and Political Rights, Article 27 and International Covenant on Economic, Social and Cultural Rights, Article 15

¹⁵ International Covenant on Economic, Social and Cultural Rights, Article 15

¹⁶ International Covenant on Civil and Political Rights, Article 9

Right to freedom of expression, opinion, and religion

Any new instrument must reaffirm and guarantee older people's rights to, freedom of expression and opinion¹⁷ and religion¹⁸, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Any new instrument should articulate how the rights to freedom of expression specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- access to information about their legal rights and benefits, including through, inter alia, awareness campaigns, the media, internet sites and national associations or offices on ageing.

Right to privacy and family life

Any new instrument must reaffirm and guarantee older people's right to respect for privacy, home and family life, and correspondence¹⁹, and to protection of the law against arbitrary or unlawful interference with these rights. It must also recognise the evolving concept of family to include such relationships as older people may choose, including extended caregiving roles and grandparenthood.

Any new instrument should articulate how the right to respect for a private and family life specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- elimination of discrimination against older people, especially older women and people of differing sexual orientation, in all matters relating to privacy, home, communication, marriage and family;
- the right of a widow or widower to reside in the matrimonial home, even upon remarriage, and be protected from unlawful interference in this regard;
- the autonomy and dignity of all older people in all settings where they temporarily or permanently reside, including hospitals, rehabilitation centres and long-term care facilities;
- provision of social services and financial support to older people responsible for the care of grandchildren or other orphaned or vulnerable children;
- no arbitrary and unlawful interference with the rights of older people to choose where they live and with whom;
- grandparental access to grandchildren in the case of family breakdown;
- privacy of older people's information and communications.

¹⁷ International Covenant on Civil and Political Rights, Article 19

¹⁸ International Covenant on Civil and Political Rights, Article 18

¹⁹ International Covenant on Civil and Political Rights, Article 17

Right to freedom of movement

Any new instrument must guarantee the rights of older people to liberty of movement, to freedom to choose their residence and to a nationality²⁰.

Any new instrument should articulate how the right to freedom of movement specifically applies to older people and in old age, and commit States Parties to taking appropriate measures to ensure, inter alia:

- the right to acquire and change a nationality and are not deprived of their nationality arbitrarily;
- freedom to leave or enter any country;
- no deprivation, on the basis of their age, of older people's ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement.

Rights of older people in emergency contexts, including situations of armed conflict and disasters

Any new instrument must guarantee the rights of older people in emergency contexts, including situations of armed conflict and disasters²¹.

Any new instrument should articulate how the human rights of older people apply in emergency contexts, including situations of armed conflict and disasters, and commit States Parties to taking appropriate measures to ensure, inter alia:

- humanitarian responses are based on the principles of impartiality, neutrality, independence and humanity;
- humanitarian responses take into account the vulnerabilities of older people as well as their leadership capacities in restructuring, resettlement, and peace and reconciliation efforts as well as economic recovery and support to families;
- identification of, and consultation with, older people to assess their needs and capabilities as the basis of the design and delivery of appropriate humanitarian responses;
- access to appropriate and adequate essential services including assistance with registration and documentation requirements, food and water, fuel, shelter, opportunities for family reunification, transport, health care and nutrition support, livelihood intervention strategies;
- where appropriate, and based on assessment of older people's needs, delivery of services designed and adapted to address the specific concerns and vulnerabilities of older people relating to their age, for example in health and nutrition assistance;
- access to information messages about the emergency, the changing security situation, and the availability of humanitarian assistance and rights protection services;

²⁰ International Covenant on Civil and Political Rights, Article 12

²¹ See Convention on the Rights of Persons with Disabilities, Article 11

- protection from risks that they face including, but not limited to, violence (including sexual and gender-based violence), threats on their safety and security, discrimination, neglect or deprivation, family separation, restriction on their freedom of movement, loss or destruction of personal documentation, interference or discrimination regarding the right to enjoy one's house, land and other property, and possessions;
- inclusion of older people into all stages of national disaster preparedness plans including accessible information in early warning systems, mobility and transport during evacuations, appropriate and accessible shelter that provides privacy and safety, sufficient stocks of essential medicines and assistive devices, and training of health care workers.

6. Implementation, monitoring and accountability mechanisms

To be effective a new instrument must provide for the establishment of strong implementation, monitoring and accountability mechanisms at both the international and national level.

Disaggregated data is central to exposing patterns of discrimination, effective implementation and monitoring. To this end a new instrument must create obligations on State Parties to the collection, disaggregation, analysis and dissemination of data by age and sex, all ages up to and over 100 years in 5-year periods.

In terms of implementation at the national level, a new instrument should provide for the establishment of a co-ordinating mechanism within government with responsibility to implement the provisions of the instrument in ratifying countries.

The instrument should recognise the importance of international co-operation, including through international development programmes, in the implementation of its provisions.

In terms of monitoring, the instrument should provide for the establishment of independent national monitoring bodies in each country that ratifies it. Civil society, in particular older people, should be involved and participate fully in these monitoring bodies.

With regard to strengthening accountability, individuals should be afforded access to enforceable individual complaint mechanisms at the national level.

At the international level, a new instrument should create an independent treaty body to monitor States Parties on national implementation, receive periodic reports, receive individual complaints and make recommendations on compliance with provisions within the instrument. Provision for such an international monitoring body must take into account the outcomes of the on-going review of the treaty body system and incorporate those recommendations that arise from that process to strengthen its effectiveness.

A new instrument should be open to signature and ratification and/or accession by regional integration bodies.