

## Neglect, violence and abuse

### **1. In your country are there specific studies or surveys on violence and abuse against older persons?**

A key obstacle in developing robust data is the very high level of underreporting of elder abuse, which, according to WHO, can reach up to 80% of all cases worldwide.

The extent and quality of surveys and studies on this topic vary widely from those with no information, such as Chile, Lesotho, Mongolia, Iraq, Tanzania and Greece, who rely on information from newspaper reports and/or civil society organizations, to those with multiple sources of data, for example, Australia, Canada, Germany and the USA, from both Governmental, non-governmental and academic sources.

As an overview from the EU perspective, the NGO, Age Platform Europe noted that in the region overall, cross-national studies are largely missing, and national data are not always readily available. Moreover, there are gaps in data, such as on the prevalence of abuse in residential settings and relating to older people with severe cognitive impairment.

In between are Member States that gather information from ad hoc surveys. For instance, the Dominican Republic mentioned a study from 2010 that was funded and carried out by a national NGO and UNFPA and those that receive some information on violence and abuse through national surveys on wider issues. For instance, Argentina referred to the National Survey about Quality of Life of Elderly Persons from 2012,

By far the largest number of Member States is those rely on data produced from domestic violence cases, which linked to the legislative. For example, the Ombudsman of the Ukraine reported that general data on violence in the family is the only data source, and it is not disaggregated by age. Some such as Peru track cases of abuse of older women only through periodic reporting of the National Programme against Family and Sexual Violence. While studies on gender-based violence may indirectly address elder abuse, methodological issues and age limits do not always allow capturing violence at the intersection of ageing and gender.

A number of countries receive indirect information via general crime databases and abuse hotlines and from care home investigations, such as Trinidad and Tobago and France.

Looking ahead, a number of Governments are setting up new surveys and tracking systems. Australia is funding a scoping study to build an evidence base on abuse to better understand its nature and prevalence. The USA is launching the National Adult Maltreatment Reporting System for States to submit data on elder abuse. The Philippines has started a pilot reporting programme in 4 regions (2016-2018) which will investigate, document and follow up on abuse. The Ombudsman of Bolivia noted that the Ministry of Justice through the Plurinational System of Prevention, Attention, Sanction and Eradication of Violence (SIPPASE) is building a Comprehensive System on Violence.

### **2. What forms of violence, abuse and neglect (e.g. physical, psychological, sexual, financial, or other) are registered? What is the setting in which they occur (i.e. residential and non-**

***residential)? Is there information about the type of perpetrators? (b) Does violence, abuse and neglect particularly affect specific groups of older persons? If so, which groups and how?***

The types of abuse cited (physical, psychological, sexual, and financial) are relatively similar across Member States with some particular contextual cases. For instance the Australian Human Rights Commission, which highlighted abuse in the use of drugs to sedate older persons under the category of chemical abuse to witchcraft accusations, violence and property grabbing (Government of Lesotho and The Commission for Human Rights of Tanzania).

While the majority of Member States and stakeholders cited older women as the most vulnerable to abuse (increasing with age), the Australian Human Rights Commission noted that older Indigenous peoples, older people in rural and remote areas, older people in culturally and linguistically diverse communities, and older LGBT are particularly vulnerable to abuse. Trinidad and Tobago noted that those who are home bound and dependent on intermediaries for care are more at risk.

Financial abuse appears to be on the rise worldwide. Abusers are family members, close friends and caregivers - with financial abuse committed both by family and community members as well as scam artists and as a result of unethical business practices. Perpetrators with problems such as alcohol and drug abuse and poverty, violence, unemployment were cited by both Slovenia and Mongolia. Property grabbing abuse depends very much on the level of protection provided by law.

***3. Does your country's legislation explicitly address issues of violence, abuse and neglect against older persons? If not, what legislation applies to such issues in the context of older persons? Does this legislation sufficiently address the full range of violence against older persons?***

There were a wide variety of responses to this question that clearly points to a patchwork of approaches. They ranged from references to the general Penal Code on violence and crime, with a high number referencing legislation on domestic abuse and violence, to more specific legislation on violence against older persons, or preventive measures through guidelines and policies.

A number of European and Nordic Member States take the preventive approach with guidelines, programme and regulating oversight on care standards and abuse hotlines, but not within a specific legislative framework. Age Platform Europe cited a number of EU-funded projects have developed voluntary frameworks to prevent elder abuse, such as the European Charter of the rights and responsibilities of older people in need of long-term care and assistance and the European Quality Framework for long-term care services

The European Network of National Human Rights Institutions noted that there are no international or, in Europe, regional human rights standards specifically prohibiting neglect, violence and abuse. Instead, the right has become inferred from related, broad standards, such as the right to dignity, to the highest attainable standard of health, liberty and freedom of movement, legal capacity, equality before the law, and privacy. The inferred protection under existing human rights instruments is also cited Paraguay who verifies the human rights of those in institutions through the State institution, National Mechanism for the Prevention of Torture as a provision of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and under Article 15 of the CRPD, practices involving restraints and seclusion may be considered torture or another form of ill-treatment.

A few countries have legislation which specifically addresses abuse and violence against older persons such as China, Mexico and Viet Nam. The Chinese legislation not only addresses the

treatment of older members of the family, but its Article 25 also states that domestic violence against older persons is prohibited. The Vietnam Association for the Elderly cited a wide-ranging "Elderly Law" approved in Viet Nam in 2009, In Bolivia, Law No. 369 (General Law on Older Persons of May 1, 2013) specifically regulates the issue of violence against older adults. In November 1999, Costa Rica enacted the Comprehensive Law for the Elderly Person, N° 7935, which penalizes physical, sexual, psychological and patrimonial violence against older persons. The Dominican Republic has several laws covering negligence, exploitation and violence against older persons as well as domestic violence against women. It also has a new Penal Code which sanctions the abandonment of an older person in need of protection.

In a number of cases, issues of mandatory economic support and care by the family are legislated along with that to prevent violence and abuse, presumably equating a lack of family support as a form of abuse. According to the Economic and Social Commission for Western Asia (ESCWA), in 12 countries (Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Libya, Morocco, Palestine, Qatar and Yemen), laws and policies hold adult children, mainly the eldest son, responsible for the well-being of their ageing parents. The Centre for Gerontological Studies India also noted the Maintenance Act 2007 and Tribunal under Maintenance and Welfare of Parents and Senior Citizens and the Hindu Adoptions & Maintenance Act, 1956, but states that this legislation is too narrow and ineffective to serve as the primary legal channel for guaranteeing the rights of older persons. The Australian Human Rights Commission noted that a number of Australian jurisdictions also have "neglect offences which may apply regarding elder abuse. These are generally framed as a fail[ure] to provide necessities or necessities of life, including adequate food, clothing, shelter and medical care".

Many countries have legislation on violence and abuse against women or family violence prevention (including domestic violence) which does not explicitly mention older persons, (Lesotho, Lithuania, Slovenia, Ecuador, Philippines, Guatemala). Clearly, this legislation only covers issues within the family setting or among those sharing a household, albeit some have added amendments on elder abuse and there are many questions as to whether domestic violence legislation adequately prevents or follows up on elder abuse. For example, Chile, in 2010, amended existing legislation on Domestic Violence and Family Court and the Criminal Code to include more explicit reference to elder abuse, and Israel has the Law for Prevention of Violence in the Family 1991, permitting "therapeutic intervention and protection of elderly victims of abuse".

Many Eastern European countries have similar legislative approaches that are also mostly built around laws on domestic violence. In Croatia, there is a proposed domestic violence prevention strategy 2017-2020. Similarly, in Bosnia and Herzegovina, a major step in providing protection for victims of domestic violence was taken several years ago with the adoption of the Law on Protection from Domestic Violence. The Ombudsman of Lithuania noted that legislation only encompasses a small part of the principles laid down in international and regional non-binding documents and guidance, i.e. law on social integration, domestic violence, social services with no laws on protection of older persons from violence,-even though neglect and human rights abuses are common in long-term care institutions. The Commission for Human Rights of Poland cited the Domestic Violence Prevention Act, as did the NGO Zivot 90, which noted that, as of March 2006, the Czech Republic adopted legislation for protection against domestic violence.

The Regional Public Foundation Assistance for the Elderly "Dobroe Delo" of the Russian Federation states that there is no explicit legislation to protect older people from violence in the country and that the draft federal law "On Prevention of Domestic Violence" has not yet been adopted by the Parliament.

Similarly, many countries referred to general legislation and the criminal code on crime, assault etc., such as Canada, Iraq Qatar and Spain. A number of countries such as Trinidad and Tobago and Slovenia additionally treat age-related assault and violence as an aggravating circumstance in sentencing.

#### **4. What legislation exists to protect older persons specifically against financial abuse, including inheritance abuse?**

The NGO, AARP<sup>1</sup> cites research that estimates the annual financial loss by victims of elder financial abuse is to be at least \$2.9 billion dollars, a 12% increase from the \$2.6 billion estimated in their 2008 study. While every state has enacted legislation prohibiting the abuse of elderly or vulnerable victims, some scholars believe that since the laws vary greatly between jurisdictions and therefore, efforts to protect older persons are inconsistent

Similarly, the Australia Human Rights Commission states that financial abuse appears to be the most common type of elder abuse experienced in Australia. Since fraud and other forms of financial abuse are criminal matters, they are dealt with primarily under State and Territory crimes legislation. However, these issues are often difficult and complex to prosecute; and may not offer the most appropriate redress to victims, particularly in situations involving familial financial elder abuse

Legislation covering financial abuse are mostly governed by laws related to powers of attorneys, wills, guardianship and decision-making, exploitation and fraud prevention in developed countries (Australia, Canada, Germany, UK, France, USA), to laws covering domestic violence, which are not necessarily sensitive to the needs of older people. For instance, in Bolivia the protection of older adult women from financial abuse, including hereditary abuse, is governed by Law No. 348 (Law to guarantee women a life free of violence), that in article 7 it is characterized as patrimonial and economic violence. The NGO Bangladesh Mahila Parishad noted that due to the social context of Bangladesh, most of women in rural and slum areas do not own land and other. However, according to the Muslim Personal Law (Shariat) application act, 1937, wives inherit one-eighth if there is a child and if there be no child, gets one-fourth

Some countries mentioned legislation specific to inheritance protection (China, Iraq, Slovenia, Republic of Korea, and Turkey.) Some countries noted the absence of legal protection from financial abuse but that the Government is to address it in the future (Trinidad and Tobago, Philippines (Legislation in Congress). In large number, countries referred to general legislation, such as Jamaica which has provisions to protect older persons under the general Forgery Act and Larceny Act.

As an example of contextual situations where legislation proves difficult to apply in practice, Human Rights Watch noted that in 2013, Zimbabwe adopted a new Constitution that provides for equal rights for women, including for inheritance and property. In practice, however, existing laws only apply to widows in officially registered marriages. Estimates are that most marriages in Zimbabwe are conducted under customary law and are not registered

The Ombudsman of Colombia noted that The Colombian Civil Code establishes provisions that regulate the hereditary vocation and the power of the people in a generic way of making a will on their property, without specifying or mention to older persons. The procedures are generic and in

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<sup>1</sup>The MetLife Study of Elder Financial Abuse Crimes of Occasion, Desperation, and Predation Against America's Elders, MetLife 2 (June 2011) <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financialabuse.Pdf>.

respect of the granting or subscription of documents, the law only provides that the consent of the people, should be granted in full use of his/her mental faculties, that is to say that they are able to understand their actions. This is similar in many other countries (Latvia, Croatia, Serbia).

The Serbian Red Cross noted that older people are not well informed about their legally granted rights and there are recorded cases of fraud where they were falsely lead to believe certain things about their rights: in practice it is quite common that all of the property acquired through marriage tends to be registered under the husband's name even though legally it should be considered marital property. On the other hand, there are common cases in practice where descendants of the decedent suggest to the surviving marital partner to renounce the inheritance and there are also recorded cases where the surviving partner renounced the inheritance under duress. In practice it is also fairly common that older persons assign and distribute their property to their descendants during their lifetime and are left without any property.

The Ombudsman of Croatia cited a particular issue that is common in some Eastern European countries concerning fraud within the "Maintenance Until Death Contract for care and services" wherein older persons signs over part of or whole of property for care until death . In reality the property is signed over immediately with no guarantees of level and quality of care.